

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

SEPTEMBER 27, 2005

+ + + + +

The Public Hearing convened in Room 1114 South, 441 4<sup>th</sup> Street, NW, Washington, D.C., 20001, pursuant to notice at 12:30 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE G. MILLER	Vice-Chairperson
CURTIS ETHERLY, JR.	Board Member
JOHN A. MANN, II	Board Member (NCPC)

ZONING COMMISSION MEMBERS PRESENT:

KEVIN HILDEBRAND  
ANTHONY HOOD

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLY BAILEY	Zoning Specialist
JOHN NYARKU	Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL:

SHERRY GLAZER, ESQ.  
MARY NAGELHAUT, ESQ.

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OFFICE OF PLANNING STAFF PRESENT:

KAREN THOMAS  
STEVEN COCHRAN  
STEVEN MORDFIN

This transcript constitutes the Minutes from the  
Special Public Hearing held on September 27, 2005.

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P-R-O-C-E-E-D-I-N-G-S

1:29 P.M.

CHAIRMAN GRIFFIS: Call to order -- is it our morning session. Indeed our morning session of the 27th of September 2005 of the Board of Zoning Adjustment in the District of Columbia.

My name is Jeff Griffis, Chairperson. Joining me today is Ms. Miller, the Vice Chair and Mr. Etherly our esteemed colleague.

Representing the National Capitol Planning Commission is Mr. Mann and representing the Zoning Commission with us today is Mr. Hood.

A very good afternoon to you, Mr. Hood.

Copies of today's hearing agenda are available somewhere in the room. Actually, they're available right behind us on the table. If you entered in on this side, you can pick one up. We can actually Kyle has put them on the other table also for people.

As you can see, we are not in our normal hearing room or maybe you have never been before the Board. However, we are under major renovations downstairs and we are looking forward to new and better accommodations to serve the public. But in the meantime, we are making due. We should all take the

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1 great opportunity to enjoy the view from the 11th  
2 floor of 441. Because let me tell you, it's pretty  
3 spectacular.

4 But that being said, we'll get right down  
5 to business.

6 We are normally broadcast live on the  
7 Office of Zoning's website. That is not something  
8 that we have capability of today. However,  
9 importantly we are being recorded. We're recorded by  
10 a Court Reporter who is sitting with us at the table.

11 You will note that we may have technical  
12 difficulties as we put this all together on a  
13 temporary basis, so bear with us and we appreciate  
14 everyone's patience. And we appreciate everyone's  
15 patience in their flexibility of schedule.

16 We're going to get through the day very  
17 quickly and expeditiously, I do believe.

18 So, with that in mind, let's move ahead.

19 The order of procedure for special  
20 exceptions and variances is as follows. We hear from  
21 the Applicant in the presentation of their case. We  
22 will then hear any Government reports attended to the  
23 application. We will then ask if the ANC is present  
24 to provide us with their presentation or memo. Then  
25 we will go to any persons or parties that are in

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1 support of the application and hear their testimony.  
2 We will then go to persons or parties in opposition to  
3 an application and hear their testimony.

4 Finally, we will hear from the Applicant  
5 again if they have any rebuttal testimony, witnesses  
6 or closing remarks.

7 Cross examination is permitted by the  
8 parties established in the case. The ANC within where  
9 the property is located automatic with the party in  
10 the case, then therefore will be able to conduct cross  
11 examination.

12 We will close the record on all hearings  
13 at the end of today unless we make specific note that  
14 we will continue the hearing or that we will keep the  
15 record open for specific information.

16 We will be very specific on both of those  
17 instructions. Most importantly, if the record is kept  
18 open for specific information, we will make great note  
19 of that and we will also indicate exactly when it is  
20 to be submitted into the Office of Zoning and  
21 therefore into the record.

22 Very important to understand this aspect  
23 because the Board in its deliberations and decisions  
24 will base it only on the record that's created before  
25 us today in this public hearing. Attended to that all

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1 of our proceedings must be carried out in the open and  
2 before the public and that is in accordance with the  
3 Sunshine Act.

4 Our rules, regulations and procedures also  
5 allow us to enter into Executive Session both during  
6 or after a hearing on a case. And that is within the  
7 parameters of the Sunshine Act also.

8 Let us move very quickly ahead and let me  
9 say again a very good afternoon to Ms. Bailey with the  
10 Office of Zoning who is with us. Mr. Moy who is  
11 attending to other things outside of the room at this  
12 point.

13 I'm going to ask all those people that are  
14 here today that are going to provide testimony before  
15 the Board if you would please stand and give your  
16 attention to Ms. Bailey. She's going to swear you in.

17 CHAIRMAN GRIFFIS: Let's do this. May I  
18 ask if you would all solemnly swear or affirm that the  
19 testimony you are about to give in the proceedings  
20 will be the truth, the whole truth and nothing but the  
21 truth.

22 How do you respond? Very well. Thank you  
23 all very much. Why don't we have a seat and make  
24 yourselves comfortable.

25 And let's move ahead then to any

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1 preliminary matters.

2 Preliminary matters are those which relate  
3 to whether a case will or should be heard today. And  
4 lack of microphone and recording is not a point of  
5 which we will kick you off the schedule. But we will  
6 make great accommodations.

7 However, seriously, preliminary matters  
8 are a request for a postponement, continuances,  
9 withdrawals, or whether proper and adequate notice has  
10 been provided.

11 Ms. Bailey, are you aware of any  
12 preliminary matters for the Board's attention at this  
13 time?

14 MS. BAILEY: -- at all. There is a  
15 preliminary matter that has to do with monograms--

16 CHAIRMAN GRIFFIS: Excellent. Is there  
17 any--

18 MS. BAILEY: None sir.

19 CHAIRMAN GRIFFIS: Very well. Then  
20 there's no action required by the Board. Very well.

21 Then let's move ahead then and let me ask  
22 if anyone here present has any preliminary matters for  
23 the Board's attention?

24 None being indicated, let's go ahead and  
25 call our first case for today.

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1 MS. BAILEY: Application number 17361,  
2 William H. Mosley and Lisa Dowden, pursuant to 11 DCMR  
3 3103.2, for appearing --

4 CHAIRMAN GRIFFIS: Excellent. Thank you  
5 very much, Ms. Bailey.

6 Why don?t we have the Applicant come  
7 forward. You can have a seat right where the mikes  
8 are. Nice and close. We?d like if you try not to  
9 throw anything at us because we?re in great range  
10 right here.

11 Excellent. And I?m going to ask if you  
12 would just state your name and address for the record.

13 MR. MOSELY: William H. Mosely, M-O-S-L-E-  
14 Y. 1742 Hobart Street, NW.

15 CHAIRMAN GRIFFIS: Excellent.

16 MR. MOSELY: In the District.

17 CHAIRMAN GRIFFIS: I?m going to have you  
18 pull that microphone off a little bit and then tilt it  
19 up towards you and I think that may help a little bit  
20 as our transmission goes through.

21 Very well. And as Ms. Bailey has  
22 indicated, of course, you are here for 1742 Hobart  
23 Street, NW. It is in the R-4 District and this is a  
24 Special Exception under 223.

25 MR. MOSELY: Yes.

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1 CHAIRMAN GRIFFIS: Why don't we just open  
2 it up for a quick opening statement if you have. I  
3 think the record is very sufficient in this and we  
4 will go right to questions. But let me let you have  
5 an opportunity to address the Board.

6 MR. MOSELY: Yes. I'll just briefly say  
7 we've been pursuing this for on and off--there were  
8 some earlier--initially we applied. I'm not sure what  
9 the problems were. Some of our applications were lost  
10 a couple of times and we had some other snafus, but  
11 we've been pursuing this for over a decade. So, I'm  
12 hoping this is coming to a conclusion now.

13 It's a rather small deck as we've  
14 redesigned it. Our initial application was for 194  
15 square foot deck. We've downsized it by about a third  
16 to fit within the maximum lot occupancy requirements.

17 It's very in character with the rest of  
18 the neighborhood. I submitted some photos which I  
19 believe you have, which show that in this range of  
20 part of our block most houses have some sort of rear  
21 addition, most of them a deck. And I don't believe  
22 anybody from the ANC is here, but the ANC did endorse  
23 our application, both when we filed it originally as a  
24 variance and then when we changed it to a Special  
25 Exception, they also endorsed the application.

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1 CHAIRMAN GRIFFIS: Excellent. Thank you  
2 very much.

3 Let me ask, is ANC-1D present today?  
4 Anyone from the ANC?

5 Not noting anyone present, you are  
6 correct.

7 Very well.

8 Are there initial questions from the  
9 Board? Any questions? Clarifications?

10 Ms. Miller.

11 VICE CHAIRPERSON MILLER: No. I don't  
12 know if this is premature but the Office of Planning  
13 made a suggestion that you add screening and I'm  
14 wondering if you discussed that with the Office of  
15 Planning?

16 MR. MOSELY: Screening? You mean a screen  
17 like a physical screening?

18 VICE CHAIRPERSON MILLER: I should wait  
19 for the Office of Planning.

20 MR. MOSELY: I don't believe I heard that  
21 suggestion, but we are open to suggestions if--

22 VICE CHAIRPERSON MILLER: Okay. We can  
23 wait until the Office of Planning addresses it then.  
24 You have a copy of their report thought. Is that  
25 correct?

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1 MR. MOSELY: Yes.

2 VICE CHAIRPERSON MILLER: Okay. I was  
3 referring to page 4. OP believe the Board should  
4 require the Applicant to add some type of screening on  
5 both sides of the deck above the railing to add a  
6 measure of privacy for the adjoining neighbors.

7 MR. MOSELY: Okay. We discussed that.  
8 One of our neighbors at 7444 Hobart to get some kind  
9 of--something that would provide privacy. We're  
10 certainly open to that.

11 VICE CHAIRPERSON MILLER: As far as being  
12 in character of the rest of the neighborhood, is there  
13 screening like that on other people's decks?

14 MR. MOSELY: If you're talking about  
15 screening like a mesh screen? I don't know that  
16 there's anything there. I mean, there's like lattice  
17 work. There is some kind of--mostly they're usually  
18 made of wood. The decks are wooden and whatever kind  
19 of barrier or privacy shield is usually wood. But we  
20 can do whatever is both in character and benefits the  
21 neighbors.

22 VICE CHAIRPERSON MILLER: Okay. I'm sure  
23 Office of Planning will address it.

24 MR. MOSELY: We're very flexible on that  
25 thought.

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1 VICE CHAIRPERSON MILLER: Okay. Thank  
2 you.

3 CHAIRMAN GRIFFIS: After 10 years, you  
4 probably have a couple of options in this thing drawn  
5 up.

6 This also went through historic review.  
7 Correct?

8 MR. MOSELY: Yes. Yes.

9 CHAIRMAN GRIFFIS: And I imagine it was on  
10 a consentor?s-- as it just happens it was in the rear,  
11 so that would have to go back to put screening in.

12 Have you had any discussions with your  
13 adjacent neighbors about--

14 MR. MOSELY: Yes. With both -- the  
15 neighbors on both sides of our house have approved it.  
16 Submitted letters and it should be in the record,  
17 some of the letters in support.

18 CHAIRMAN GRIFFIS: And that was as shown,  
19 and there were just the rails that are showing, not  
20 any sort of large screening?

21 MR. MOSELY: Right. I don?t know if I  
22 showed them the actual plans, but I know that our  
23 neighbors at 1744 we discussed some kind of privacy.  
24 Some kind of barriers. Discussing something that  
25 would provide the more privacy because they have a

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1 deck. And so that we would work with them to  
2 accommodate this.

3 CHAIRMAN GRIFFIS: Okay. Okay. That  
4 seems like it would work to the benefit of everybody.

5 Okay. Any other questions from the Board?  
6 Quick clarification?

7 I'll just state for the record, as I'm not  
8 sure that we picked up on everything that we said.  
9 But it's very clear that the initial application that  
10 was brought in was for variances. You have amended  
11 that application and made it into a Special Exception  
12 under 223. One of those aspects was to reduce the  
13 deck size in order to accommodate the lot occupancy  
14 that would fit within the Special Exception.

15 So, with that, let's move ahead then to  
16 the Office of Planning for their report.

17 MR. MOORE: Good afternoon, Mr. Chairman  
18 and members of the Board. I'm John Moore. The Office  
19 of Planning is standing on the record to support that  
20 application and to answer Ms Miller's question,  
21 talking about lattice screening which answers common  
22 with the index.

23 The Office of Planning would adapt in  
24 terms of getting the project reduced to a legally  
25 acceptable occupancy. At a starting point the

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1 Applicant must use a model, 1744 and I that would be  
2 illegal.

3 CHAIRMAN GRIFFIS: Right.

4 MR. MOORE: They've already been cited for  
5 connecting to it, but we would support that  
6 application.

7 CHAIRMAN GRIFFIS: Okay.

8 MR. MOSELY: I appreciate your help I mean  
9 to start working with us and advise us.

10 CHAIRMAN GRIFFIS: Excellent. Any  
11 questions of the Office of Planning then?

12 Ms. Miller?

13 VICE CHAIRPERSON MILLER: Mr. Moore, so  
14 would you agree thought that if we require the  
15 lattice, he'll have to go back to Historic  
16 Preservation Review Board

17 MR. MOORE: I wouldn't think so.

18 VICE CHAIRPERSON MILLER: And why is that

19 MR. MOORE: First of all, the lattice is a  
20 completely solid structure. You can see through it.  
21 Screen it off on the immediate property.

22 I can't imagine having to go back to HP  
23 for something like this simple. I'd be glad to, of  
24 course, discuss it in assisting the office, but I'm  
25 sure it's okay.

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1 VICE CHAIRPERSON MILLER: Okay.

2 MR. MOORE: When you look at the degree of-  
3 -17 block of Hobart, you got a whole myriad of deck  
4 options and different kind of screening equipment on  
5 some of the decks, but there?s a myriad of things.

6 VICE CHAIRPERSON MILLER: Okay. Thank  
7 you.

8 CHAIRMAN GRIFFIS: Good. Anything else?  
9 Any questions? Clarifications? The ANC has not  
10 indicated that they are present. However, they had  
11 submitted in their approval, Exhibit Number 23. We  
12 note that for the record.

13 I don?t have any other Government agency  
14 reports. We had noted the HPRB had looked at this and  
15 given its consent.

16 Unless anyone else is aware of any other  
17 agency reports submitted into the record, I think we  
18 can move on.

19 I would note that we have Exhibit Number  
20 24, correspondence in support of the application from  
21 1744 and also 1740 Hobart Street.

22 Is anyone here present in regards to 17361  
23 that would like to provide testimony today, persons  
24 present to provide testimony in support or in  
25 opposition?

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1 Not noting any indication why don?t we  
2 turn out for any questions you might have.

3 Excellent. If we had more time, I?d ask  
4 you why it took a decade as we don?t--

5 MR. MOSELY: It?s a long story.

6 CHAIRMAN GRIFFIS: Exactly.

7 Let?s go to the one issue of the screening  
8 that is one of the basis of recommendations. I don?t  
9 think it rises as I?m hearing it, the Office of  
10 Planning has the basis of which their recommendation  
11 of approval rests. But it?s a good kind of design  
12 direction and recommendation.

13 Are you adverse at all or see any  
14 difficulty in designing and constructing some sort of  
15 screening element on your property line?

16 MR. MOSELY: Not at all. I think that --  
17 in fact, I think it would be beneficial to the  
18 neighbors on all sides and privacy for us.

19 CHAIRMAN GRIFFIS: Okay. And I think it?s  
20 sound advice also as it does lend some privacy and use  
21 to your deck and the adjacent design of which will --I  
22 don?t need to prescribe at all but obviously can be  
23 working in with the owner and his contractor.

24 Anything else then?

25 Very well. If there?s nothing further, I

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1 move approval of application 17361 for the deck  
2 addition at 1742 Hobart Street, NW, as amended in the  
3 application and as indicated having screening element  
4 on the property line. And I would ask for a second.

5 MR. MANN: Second.

6 CHAIRMAN GRIFFIS: Thank you very much,  
7 Mr. Mann.

8 Other to speak to the motion?

9 I think we can rest very securely first of  
10 all on all the submissions that are bringing in our  
11 direction in support of the Office of Planning's  
12 analysis that goes to the entire test which we haven't  
13 taken the time to do. It is in the record and the  
14 Board has reviewed it and looked at it substantially.

15 But it does rise to the level of the test of whether  
16 it would impair any of the light or the air, use and  
17 enjoyment of adjacent properties.

18 There's no evidence in the record at all  
19 in this case that would show that there would be that  
20 type of element as it's been reduced to Special  
21 Exception. Of course, that threshold for approval is  
22 diminished substantially from the variance itself.

23 I don't see any reason why we would not  
24 approve such exception and obviously we do have a  
25 motion for approval. It's been seconded. I'll ask

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1 for any other comments on that.

2 Hearing no other comments from the Board,  
3 I would ask for all--

4 Yes. Ms. Miller?

5 VICE CHAIRPERSON MILLER: I was just  
6 wondering why is it that we would not add the  
7 requirement for the screening?

8 CHAIRMAN GRIFFIS: Why?

9 VICE CHAIRPERSON MILLER: Why?

10 CHAIRMAN GRIFFIS: We did.

11 VICE CHAIRPERSON MILLER: Oh, you did.  
12 Oh, I thought you were leaving it up to them.

13 CHAIRMAN GRIFFIS: That's what the motion  
14 is. We're not going to design it.

15 VICE CHAIRPERSON MILLER: Okay. Exactly.  
16 With some screening.

17 CHAIRMAN GRIFFIS: And maybe if we had  
18 time we could probably--no. We probably shouldn't  
19 design the darn thing.

20 I think in working with Mr. Moore, I would  
21 take him up on the fact that we're going through just  
22 to make sure that this doesn't get bogged down in  
23 preservation review. It's a very simple detail and I  
24 think you can something nice on that and it's not that  
25 long of a linear dimension that would have to be

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1 provided.

2 Very well. We do have it before us and  
3 seconded. I'd ask for all those in favor signify by  
4 saying aye?

5 (AYES)

6 CHAIRMAN GRIFFIS: And opposed?

7 Mr. Moy? Oh, Ms. Bailey.

8 MS. BAILEY: --

9 CHAIRMAN GRIFFIS: Okay. Very well.  
10 Well, we'll note that the vote was taken and it was  
11 unanimous in support of the application.

12 I thank you very much. We appreciate your  
13 flexibility in finding us today and also finding us at  
14 the appropriate time.

15 I don't see any reason why we'd have to  
16 issue a fore order on that unless any Board members  
17 have any objections to doing that. We can issue a  
18 summary order in this case. Are we okay?

19 (Whereupon, off the record from 1:47 p.m.  
20 to 1:51 p.m.)

21 CHAIRMAN GRIFFIS: Is Ms. Bailey being  
22 picked up or not on that microphone? Nothing on that  
23 one? Very well.

24 If Ms. Bailey was picked up on the  
25 microphone what she would say, she'd like to call

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1 application 17363. Is that correct? Is this what I'm  
2 looking at? Excellent. Don't put me in charge. And  
3 that is for a variance from the minimum lot area and  
4 lot width requirements under subsection 401.3 from the  
5 lot occupancy.

6 I'm going to read this as it was  
7 originally put in because this is 63, although it was  
8 revised and amended to a Special Exception.

9 Is that correct? Very well.

10 The amended application, of course, is the  
11 relief under 223 from the regulations, again going to  
12 the lot occupancy with lot area provisions in the  
13 regulations. And this is for the row dwelling,  
14 single-family at premises 1120 and 1122 K. Street, SE.

15 Okay. Why don't we turn it over to you.  
16 You can just state your name and address for the  
17 record and then you can provide the Board with an  
18 opening statement.

19 MEMBER ETHERLY: I will note for the  
20 record, Mr. Chair, that this property does fall within  
21 the ANC and I do live in fairly close proximity to the  
22 property. Literally pass it every day, but I have not  
23 had any discussions with the ANC or any of the  
24 involved parties regarding this particular application  
25 nor do I feel that my familiarity with the immediate

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1 neighborhood would in anyway compromise my ability to  
2 sit impartially on the case. But I wanted to make  
3 that disclosure for the record.

4 CHAIRMAN GRIFFIS: Excellent. Thank you  
5 very much.

6 Does the Board have any questions of Mr.  
7 Etherly and his capability of hearing this case?

8 Does the Applicant have any questions of  
9 Mr. Etherly or any objection at all with him  
10 continuing in hearing this case?

11 MR. DAY: No objection at all.

12 CHAIRMAN GRIFFIS: Thank you very much. I  
13 don?t see any difficulty then, Mr. Etherly, with your  
14 own statements of being able to fairly and completely  
15 hear and decide this case. Why don?t we move ahead  
16 then and ask the Applicant to introduce himself.

17 MR. DAY: My name is Donald Day. I?m  
18 principal of Monogram Renovations and the general  
19 contractors for the project.

20 And what we are doing is we are restoring  
21 two row houses located in a historic district. We  
22 have worked with the ANC-6. We have worked with the  
23 Capitol Hill Historic Society. We have worked with  
24 the Office of Planning and we have worked with the  
25 Historic, HPRB. And we have through a series of

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1 working sessions with them, have received an approval  
2 from all four of those particular entities.

3 We are renovating the house and we need to  
4 add space to the rear which would cause us to exceed  
5 the 60 percent limit.

6 CHAIRMAN GRIFFIS: Excellent. Well, there  
7 it is.

8 Initially, the application, one was  
9 withdrawn, was for the other three lots. Is that  
10 correct?

11 MR. DAY: That is correct.

12 CHAIRMAN GRIFFIS: These are the two lots,  
13 28 and 29, which are existing structures. Is that  
14 correct?

15 MR. DAY: Yes.

16 CHAIRMAN GRIFFIS: Okay. Very well.

17 Any additional questions from the Board?

18 Ms. Miller?

19 VICE CHAIRPERSON MILLER: In changing from  
20 going from variance relief to special exception  
21 relief, did you change your plan? I think I read in  
22 the file that you said originally that the houses were  
23 going to be demolished, but now it says you're  
24 renovating them. So, are you--what's happening?

25 MR. DAY: The original was based on some

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1 bad information that I had. Originally I was told  
2 that the historic district ended at the alley, at  
3 essentially 1112 K Street. So, I thought that we were  
4 within our right to tear down and rebuild.

5 We discovered very quickly through Emily  
6 Paulis that it was not. So, she quickly guided us  
7 that we would have to restore the front to original  
8 condition and that we would have to offset any  
9 addition that went above the existing height to the  
10 rear.

11 So, we agreed to offset it 19 feet to the  
12 rear, but we do need to, from a business standpoint,  
13 need to add more square footage to the house and  
14 that's why we need to add the extended lot usage.

15 VICE CHAIRPERSON MILLER: Thank you.

16 CHAIRMAN GRIFFIS: And for clarity, what  
17 is the addition that's being put onto the house?

18 MR. DAY: The entire house is being  
19 renovated and we're simply moving the rear wall.  
20 We're extending the structure further back into the  
21 lot.

22 CHAIRMAN GRIFFIS: Okay. And is that  
23 shown anywhere on the documentation about how much the  
24 distance is?

25 MR. DAY: Yes. I believe--

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1 CHAIRMAN GRIFFIS: Do you know  
2 approximately?

3 CHAIRMAN GRIFFIS: Is it 9 feet?

4 MR. DAY: Nine feet. Yes. Is the number.

5 CHAIRMAN GRIFFIS: Okay.

6 MR. DAY: And that would be in the--

7 CHAIRMAN GRIFFIS: Would be Exhibit 23F.  
8 You show it as a dark line adjacent to or rather  
9 parallel with the adjacent property and you're moving  
10 this--

11 MR. DAY: Yes.

12 CHAIRMAN GRIFFIS: -- and the two  
13 properties back. And that keeps it still within the  
14 lot occupancy allowable for special exception to the  
15 223 review.

16 MR. HOOD: Mr. Chairman?

17 CHAIRMAN GRIFFIS: Yes?

18 MR. HOOD: Am I being picked up? I'm all  
19 right.

20 Let me just ask the Applicant, Mr. Day?

21 MR. DAY: Yes.

22 MR. HOOD: There's an alley in the back to  
23 the read. Am I correct?

24 MR. DAY: No, sir. There is an alley  
25 behind some of the properties. The alley does not

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1 extend over to 1120 and 1122. 1120 and 1122 are  
2 landlocked.

3 MR. HOOD: Okay. Okay. So, there?s not  
4 an access going through? No easement or anything?

5 MR. DAY: No, sir.

6 MR. HOOD: Okay. Thank you.

7 CHAIRMAN GRIFFIS: Well, the logical  
8 extension of that is so obviously there is no parking  
9 in the rear. Is that correct?

10 MR. DAY: That?s correct.

11 CHAIRMAN GRIFFIS: Okay. Very well.

12 Let?s move ahead then. Any other  
13 questions at this time for the Applicant?

14 Anything else you want to point us to?

15 If not, I think it would be appropriate  
16 and let?s go to the Office of Planning for their  
17 report.

18 MS. THOMAS: Good afternoon, Mr. Chairman.

19 Members of the Board. I?m Karen Thomas  
20 with the Office of Planning. And we are standing on  
21 the record in support of the Applicant?s request and  
22 we determined that the additional and renovation  
23 project would have minimal effect on light and air.

24 CHAIRMAN GRIFFIS: Very well.

25 Any questions from the Board?

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1 Does the Applicant have any cross  
2 examination of the Office of Planning?

3 MR. DAY: No. We appreciate --

4 CHAIRMAN GRIFFIS: Good. Just for  
5 clarification, I don't recall seeing it aside from the  
6 photographs, but the adjacent property of which these  
7 will be extending out from, it has penetration on the  
8 read. Is that correct? It has windows, the adjacent  
9 properties?

10 MR. DAY: The adjacent properties. Yes.

11 CHAIRMAN GRIFFIS: And are they occupied  
12 structures at this point?

13 MR. DAY: Yes. To the east there are four  
14 different properties. To the west there are no other  
15 properties that--

16 CHAIRMAN GRIFFIS: Right. Which are the  
17 three and then the deeper properties. Right?

18 MR. DAY: Yes.

19 CHAIRMAN GRIFFIS: And then so on toward  
20 the east towards 12th Street, you've talked to those  
21 residents of those structures? They've seen the plans  
22 that you're proposing?

23 MR. DAY: Yes. We did. I have personally  
24 spoken to two of the four and been unable to reach the  
25 other two and show them plans and have gotten their

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1 support for the plans.

2 CHAIRMAN GRIFFIS: Okay. Very well.  
3 Let's move ahead then.

4 You've indicated in your opening  
5 statement, of course, the other historic aspects of  
6 this and that puts in all sorts of other reviews.

7 We do have in the record, if I'm not  
8 mistaken, we had the Capitol Hill Historic Society  
9 putting in a letter today. Is this a part of this  
10 application? Right. Which came into the record today  
11 which we've reviewed. I don't have the exhibit number  
12 in front of me right not but it is in.

13 Let me ask if 6B is represented today?  
14 ANC-6B. Not noting anybody here present to provide  
15 the testimony from the ANC, we will note that Exhibit  
16 Number 29 is the support of the ANC for the  
17 application.

18 Let me ask if there's anyone else present  
19 here, persons present to provide testimony in  
20 Application 17363 either in support or in opposition?

21 Either they couldn't find the room or  
22 nobody showed up to testify. So, we can move ahead  
23 and give you an opportunity for any closing remarks  
24 that you might have.

25 MR. DAY: I have nothing further. Thank

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1 you.

2 CHAIRMAN GRIFFIS: Who is visiting today?

3 Okay.

4 CAMETRICK NESMITH: This is Denise K Smith

5 PT

6 CHAIRMAN GRIFFIS: Okay.

7 CAMETRICK NESMITH: Cametrick Nesmith,

8 PGNR Architects.

9 CHAIRMAN GRIFFIS: And you were here in  
10 case there was any hard hitting design questions from  
11 the Board, you would answer them? Okay. Well, I'm  
12 sorry we couldn't come up with those.

13 Very well. If there's nothing further  
14 then. Anything else? Clarification from the Board?  
15 It's pretty clear the record is sufficient on this and  
16 I would move approval of Application Number 17363,  
17 that is for the special exception under 223 for the  
18 presences 1120 and 1122 K Street, SE, similar in the  
19 proposed additions in the rear of these historic  
20 contributing structure.

21 And I would ask for a second?

22 VICE CHAIRPERSON MILLER: Second.

23 CHAIRMAN GRIFFIS: Thank you, Ms. Miller.

24 I think the evidence is clear that this  
25 would not rise to the level of creating any sort of

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1 detriment in light and air flow to the adjacent  
2 properties nor to the privacy and use of those  
3 adjacent properties.

4 Nothing has arisen in terms of designs,  
5 screening, lighting or materiality in the record for  
6 us to endeavor to get into in terms of conditioning  
7 and so I would move ahead with my support of this  
8 motion.

9 Open it up to others if they have any  
10 other comments or deliberation on this.

11 Not hearing anything, we do have a motion  
12 before us and a second. Let me ask for all in favor  
13 to signify by saying aye.

14 (AYE)

15 CHAIRMAN GRIFFIS: And opposed?  
16 Abstaining?

17 Very well. We will show that the vote  
18 was? Yes.

19 MR. DAY: Is this--

20 CHAIRMAN GRIFFIS: Almost. We will show  
21 that the order--the motion was presented by myself.  
22 Seconded by Ms. Miller and it was five to zero and I  
23 see no reason why we wouldn't waive our rules,  
24 regulations, procedure and issue a summary order on  
25 this case, unless there's any objection from the

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1 Board.

2 We've noted the support of that from the  
3 Applicant. So, I think we can go ahead and do that.

4 Very well. Thank you very much.  
5 Appreciate your patience with the Board in finding us.  
6 And make sure--good. The witness cards go to the  
7 recorder so he has your correct spelling of the name.

8 And is there anything else for the morning  
9 session, Ms. Bailey?

10 MS. BAILEY: Nothing more.

11 CHAIRMAN GRIFFIS: Nothing more for the  
12 morning session.

13 Then we can adjourn the morning session of  
14 the 27th of September and at the same time I would  
15 like to call to order the afternoon hearing of the  
16 Board of Zoning Adjustment of the District of  
17 Columbia. My name is Jeff Griffis, Chairperson.  
18 Joining me is Ms. Miller, the Vice Chair. And Mr.  
19 Etherly. Representing the National Capitol Planning  
20 Commission is Mr. Mann. And representing the Zoning  
21 Commission is Mr. Hood with us this afternoon.

22 It is still a beautiful day outside and we  
23 are, of course, as everyone here present in the room  
24 is aware in a different surroundings than normally.

25 We will ask everyone's patience again for

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1 all the technical difficulties we might run into, but  
2 I think we're moving very expeditiously ahead.

3 I will keep my opening remarks to a bear  
4 minimum, but it should be known that all proceedings  
5 before the Board of Zoning and Adjustments are  
6 recorded. They are recorded only in one fashion today  
7 and the Court Reporter who is sitting to my right. As  
8 you heard, possibly from the morning session, I would  
9 ask that you fill out witness cards. Witness cards  
10 would be provided to the reporter so that we can have  
11 all of the proper transcripts created for this case.  
12 You can do that prior to going forward in the case.

13 I would ask if and when you address the  
14 Board to state your name and address for the record.

15 All proceedings before the Board of Zoning  
16 Adjustment are required to be in the open and before  
17 the public. That is under the Sunshine Act, our  
18 requirement.

19 The board does enter into Executive  
20 Session during and after hearings on the case for  
21 review of records and deliberation of records and that  
22 is in accordance with our rules, regulations and  
23 procedure. And also in accordance with the Sunshine  
24 Act.

25 Our procedure for special exceptions and

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1 variances is as follows. We'll have the Applicant  
2 present their case. We will go then to any Government  
3 reports attended to the application. The ANC will  
4 then provide their report. We will go to persons to  
5 give testimony and then finally any conclusion and  
6 conclusionary remarks.

7 Ms. Bailey, are you aware of any  
8 preliminary matters for the afternoon session for the  
9 Board's attention?

10 MS. BAILEY: Just case specifics.

11 CHAIRMAN GRIFFIS: Case specifics and  
12 we'll take that up with each of the cases.

13 Let me just ask as we have a very small  
14 crowd. Were you sworn in?

15 UNIDENTIFIED PERSON: Yes.

16 CHAIRMAN GRIFFIS: Indeed. So, I think  
17 we're ready to go with the afternoon case.

18 Why don't we call the first case in the  
19 afternoon, which would be Case No. 17365, if I'm not  
20 mistaken on my own schedule here.

21 Is that correct, Ms. Bailey?

22 MS. BAILEY: --

23 CHAIRMAN GRIFFIS: Very well. And that  
24 would be--

25 COURT REPORTER: I'm sorry.

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1 CHAIRMAN GRIFFIS: That?s all right. I?m  
2 going to be repeating what she says.

3 So, Ms. Bailey, that would be Kevin R.  
4 West. Application 17365. And that would be for a  
5 variance as advertised, I would say, for a variance  
6 from the lot occupancy requirements under subsection  
7 403. Variance from the rear yard requirements to  
8 allow a two-story rear addition to an existing single-  
9 family row dwelling at premises 1535 A Street, SE.

10 Now the application has been amended? The  
11 Applicant has put in sufficient information into the  
12 record that amended the application in order to reduce  
13 the required relief to a special exception under  
14 Section 223. And the Applicant was asked to provide a  
15 new plat showing the project?s revised dimensions.

16 With that, let us go right ahead and have  
17 the Applicant introduce themselves for the record with  
18 the name and address please.

19 MR. WEST: Kevin R. West, 1530 A Street,  
20 SE.

21 CHAIRMAN GRIFFIS: Excellent. And you did  
22 submit a revised plat. Is that correct?

23 MR. WEST: Yes.

24 CHAIRMAN GRIFFIS: Good. And I?ll pull  
25 that out while you start any opening statements that

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1 you might have.

2 MR. WEST: Okay. Basically, my proposal  
3 is to add on to the rear of the house to add on a  
4 kitchen and a bedroom above it. A two-story rear  
5 addition.

6 Originally we were using the numbers for  
7 the square footage of the lot that was in the tax  
8 record which was 661. And when we originally drew the  
9 plans, we thought we were going to be under 70 percent  
10 for the special exception.

11 When the Zoning Administrator looked at it  
12 and we looked it as well, at the plat from the  
13 surveyor's office, it was obvious it was 653 and not  
14 661.

15 I was also unaware that a rear balcony was  
16 counted in the lot occupancy. And so to come into  
17 compliance with the lot occupancy requirements for a  
18 special exception, we've removed the rear balcony from  
19 the drawings and also reduced the size of the addition  
20 by four inches to bring it under 70 percent, four  
21 linear inches.

22 CHAIRMAN GRIFFIS: Okay. Excellent.

23 Is it correct, you're just up above 400  
24 square feet in this house with the addition

25 MR. WEST: For the lot occupancy. Yes.

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1 CHAIRMAN GRIFFIS: That's the lot  
2 occupancy, so that's not occupiable space. So, your  
3 footprint's about 400, 13 square feet?

4 MR. WEST: The lot occupancy--

5 CHAIRMAN GRIFFIS: I think that's right.

6 MR. WEST: 456.

7 CHAIRMAN GRIFFIS: So, it's 63.29 percent  
8 if the Office of Planning's statistics, data, is  
9 correct. That's what I'm looking at.

10 MR. WEST: Okay.

11 CHAIRMAN GRIFFIS: But I guess where I'm  
12 going is it's still a pretty small house?

13 MR. WEST: Yes.

14 CHAIRMAN GRIFFIS: Okay. Well, we're  
15 going to have to give you less time than in  
16 presentation based on the total square footage of the  
17 house.

18 Anything else?

19 MR. WEST: No. I think that's it.

20 CHAIRMAN GRIFFIS: Okay. Any questions  
21 from the Board?

22 MR. MANN: Mr. Chairman?

23 CHAIRMAN GRIFFIS: Yes.

24 MR. MANN: --how about this?

25 I just had a question regarding whether or

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1 not the house is or is not in the Capitol Hill  
2 Historic District?

3 MR. WEST: It is not.

4 MR. MANN: Okay. So, Capitol Hill  
5 Restoration Society weighs in just because it's within  
6 their area of influence then?

7 MR. WEST: Yes. Just because it's--I  
8 mean, it's on Capitol Hill, but it's about three  
9 blocks outside.

10 MR. MANN: Okay. Thank you.

11 CHAIRMAN GRIFFIS: Okay. Any other  
12 questions?

13 You indicated that you took the rear  
14 balcony off. That was obviously to stay within the  
15 lot occupancy that would keep it a special exception.

16 MR. WEST: Yes.

17 CHAIRMAN GRIFFIS: Do we have  
18 documentation that show that or--

19 MR. WEST: Yes. Let's see. That original  
20 plan that you have there shows it and then I  
21 resubmitted those same plans to show--

22 CHAIRMAN GRIFFIS: Okay. I think I have  
23 it here.

24 MR. WEST: Okay.

25 CHAIRMAN GRIFFIS: Thank goodness we can't

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1 pick her up.

2 Well, in any case, I thought I did  
3 actually get this with the entire package. But  
4 nonetheless, there's probably additional material that  
5 was submitted to us today, but it obviously shows it  
6 here in that removal of the balcony. Okay.

7 I don't have any other additional  
8 questions or concerns, unless others have questions to  
9 be brought up.

10 Let's move right ahead then to the Office  
11 of Planning's report. Mr. Cochran, how are you this  
12 afternoon?

13 MR. COCHRAN: Fine. Thank you, Mr.  
14 Chairman, on this lovely day.

15 For the record, my name is Steven Cochran,  
16 Office of Planning and I wish you would meet up in  
17 this room more often.

18 The Office of Planning is satisfied that  
19 the Applicant has revised the application sufficient  
20 to meet its ability to be considered under Section  
21 223, that it meets the test for 223 and stands on its  
22 report.

23 CHAIRMAN GRIFFIS: Excellent. Thank you  
24 very much.

25 Is there questions from the Board of the

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1 Office of Planning?

2 Ms. Miller:

3 VICE CHAIRPERSON MILLER: Yes. I have one  
4 question.

5 I was wondering if you might elaborate  
6 what you had in mind when you made this statement on  
7 page 5 which says, OP believes the proposed structure  
8 is the type of addition intended to be addressed by  
9 Section 223? What about this made you say that it's a  
10 type of edition that 223 intended to address?

11 MR. WEST: Well, that it meets all the  
12 tests. It's a simple addition to a small house. It  
13 comes in under 70 percent lot occupancy. It doesn't  
14 have any impact on the neighbors and let's see what  
15 else I can get to strengthen the record.

16 The addition as viewed from the street  
17 won't really intrude on the character of the street,  
18 because the character of the street is changing anyway  
19 because it's not in the historic district.

20 CHAIRMAN GRIFFIS: Doesn't it go  
21 fundamentally to what the regulations were actually  
22 written for? I mean, I was expecting your answer to  
23 be, Op believes that the proposed structure is the  
24 type of edition intended to be addressed in Section  
25 223 by indicating that this is an existing,

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1 nonconforming structure that fits within the limits of  
2 the lot occupancy laid out in the regulation. That's  
3 exactly what the special exception was meant to  
4 provide for.

5 MR. WEST: Well, Mr. Chairman, I think  
6 you've said that far more eloquently than I ever could  
7 have. But certainly as eloquently as I should have.

8 CHAIRMAN GRIFFIS: Close the record right  
9 there. Bring the gavel. Okay.

10 MR. WEST: If I may, I incorporate the  
11 Chairman's restatement of my answer into OP's  
12 testimony.

13 VICE CHAIRPERSON MILLER: Well, I don't  
14 now if I'll let you do that.

15 No. I just wanted just to follow up one  
16 more time.

17 I understand it meets the test that's why  
18 I think it's fine.

19 MR. WEST: Okay.

20 VICE CHAIRPERSON MILLER: But you also  
21 made a statement and I want to pursue it one more  
22 second.

23 That it was a simple edition to a small  
24 house. Is that what you think the 223 primarily is  
25 intended to address?

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1 MR. WEST: Not necessarily a small house.  
2 No. Because I've certainly seen additions to fairly  
3 large houses in different parts of town. I think it's  
4 intended to address--it's intended to let a single  
5 family house that's all on the same nonconforming lot  
6 go through a simple edition with very little hassle  
7 because the point of this is to encourage people to be  
8 able to stay in the city. And as I understand where  
9 223 came from without having to go through all kinds  
10 of proof of hardship.

11 This does not need to meet the hardship  
12 test. It simply needs to prove that it doesn't have  
13 any negative impact on anybody else.

14 VICE CHAIRPERSON MILLER: Thank you.

15 MR. WEST: Do you think that was better  
16 said than yours, Mr. Chair?

17 CHAIRMAN GRIFFIS: No. But, let's follow  
18 up on in addition and this will be our last egression  
19 into this.

20 But the regulation itself, do you believe  
21 that it sets up the parameters for scale in that?  
22 Does it set up the limits of which you fall under 223  
23 for a special exception?

24 MR. WEST: Mr. Chair--

25 CHAIRMAN GRIFFIS: And therefore it--

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1 MR. WEST: -- speaking of getting set up.  
2 I'm not sure what I am getting set up for by this  
3 series of questions.

4 CHAIRMAN GRIFFIS: Very well. We'll let  
5 it go at that. Okay.

6 VICE CHAIRPERSON MILLER: I certainly  
7 wasn't setting you up, but often 223 comes up and the  
8 question of what was it's intent comes up at various  
9 times. And so your statement seemed to address in  
10 which you saw was its intent and so that's why I was  
11 just following up. Thank you.

12 CHAIRMAN GRIFFIS: Okay. If there's  
13 nothing else for grilling the Office of Planning, the  
14 Board will ask if the Applicant has any cross  
15 examination, any questions of the Office of Planning?

16 MR. WEST: No.

17 CHAIRMAN GRIFFIS: Okay. And you do have  
18 the report?

19 MR. WEST: I do.

20 CHAIRMAN GRIFFIS: Excellent. Then  
21 lastly, Mr. Cochran, an excellent report and analysis  
22 is well done. And I do think it exactly goes to the  
23 test on how this application makes it.

24 Prior to making that definitive assertion  
25 though, let's move ahead to other aspects of the

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1 application. And let me ask if 6B is present.

2 Not noting ANC members are with us today,  
3 we will take note that Exhibit Number 21 is the ANC  
4 recommendation for approval of the application.

5 We have already mentioned the other  
6 historic aspects that have been put into the record.

7 Letters of support have been submitted  
8 into the record. Exhibit 28 and 29, 25, 24, 23, 22  
9 and 19. Let me ask if there's anybody present here  
10 today, persons present to provide testimony on  
11 Application 17365 either in support or in opposition?

12 Making notice that there is no one here  
13 present to provide testimony, we turn it over to Mr.  
14 West for any closing remarks that you might have.

15 MR. WEST: Nothing. Thank you.

16 CHAIRMAN GRIFFIS: Excellent. Mr. West,  
17 thank you very much. We appreciate all the work  
18 you've done in terms of addressing some of the issues  
19 that have come forward based on the variance in the  
20 beginning and then the special exception accommodation  
21 for the Special Exception. I think you'll find that  
22 Section 223 is actually one of the well written  
23 sections to the regulations as opposed to some others  
24 that may not be as well written.

25 But it specifically addresses a growing

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1 need and a continued need in the city and that is we  
2 have numerous structures and house, single family or  
3 family residences that were made nonconforming once we  
4 adopted our own zoning regulations.

5 And prior to the writing of Section 223,  
6 it was a variance which is a very high threshold of  
7 neatness and practical difficulty in compliance with  
8 the regulations.

9 223 allows for the additions and  
10 modifications and accommodations for existing  
11 structures that are noncompliant and other aspects  
12 that are enumerated in 223. You clearly have come in  
13 under the lot occupancy which is the threshold of  
14 scale that starts to talk about whether it's a small  
15 house or a small education. The level of parameters  
16 allowable in Section 223 is very clear. I don't think  
17 there's any need to go into additional intent as its  
18 writing is plain. And you have met it.

19 Additionally, the test, of course, for  
20 special exception specifics under 223 is whether this  
21 would if approved improve the light there, use and  
22 privacy of the adjoining neighbors, whether there's  
23 any sort of design criteria that the Board feels is  
24 required to put upon you in terms of your  
25 construction.

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1 I think the two parameters have been met  
2 and that no negative impacts would be created in terms  
3 of rising to a level of design control, I haven't seen  
4 any evidence that would make us move in that  
5 direction. Therefore, would move for approval of  
6 Application 17365 and ask for a second.

7 MR. MANN: Second.

8 CHAIRMAN GRIFFIS: Thank you very much,  
9 Mr. Mann. I'll throw this comment on the motion  
10 that's before us and seconded.

11 If there's nothing further from the board,  
12 then we do have a motion, of course, seconded.

13 I ask that all in favor signify by saying  
14 aye?

15 (AYES)

16 CHAIRMAN GRIFFIS: Opposed? Abstaining?

17 Very well. Thank you very much.

18 We'll note that the motion was put forth  
19 by the Chairman. It was seconded by Mr. Mann. The  
20 approval was unanimous.

21 I don't see any reason why we wouldn't  
22 waive our rules and regulations to issue a summary  
23 order on this unless any Board member has concerns or  
24 objection to doing that.

25 Not noting any concerns or objections, Mr.

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1 West, thank you very much. We appreciate it and good  
2 luck with that. It looks like a great addition, quite  
3 frankly, to the rear of the structure and we didn't  
4 get into all the details of your siting on the  
5 adjacent property and how you actually face a couple  
6 of them and one side faces your rear. But it was all  
7 very well put forward and documented for the Board's  
8 understanding, which makes it all the more easier to  
9 get through this expeditiously.

10 That being said, have a great afternoon.

11 MR. WEST: Thank you. Thank you very  
12 much.

13 CHAIRMAN GRIFFIS: If you wouldn't just  
14 mind putting the witness cards in at that point.

15 At this time, we are at the 2:30 mark.  
16 We've done a meeting, entire morning and half the  
17 afternoon.

18 We're going to take a 15-minute break and  
19 then we'll resume. I'm anticipating by 2:45 and not  
20 much later.

21 (Whereupon, off the record from 2:19 p.m.  
22 to 2:52 p.m.)

23 CHAIRMAN GRIFFIS: Excuse me. Let's  
24 resume then the afternoon session.

25 I understand the witnesses have come in

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1 that need to be sworn in. So, I'm going to ask you to  
2 stand and you can give your attention to Ms. Bailey.

3 (Witnesses Sworn.)

4 CHAIRMAN GRIFFIS: Excellent. So, the  
5 witnesses have been sworn in.

6 Let's move ahead then and call the next  
7 case for Board consideration this afternoon.

8 Ms. Bailey, I guess I'll do that for you.

9 Ms. Bailey, I'll get it for you.

10 We'll call Application 17367. That is for  
11 a variance from the use provisions to renovate and  
12 convert a vacant building, formerly used as a private  
13 school, into a four-unit condominium apartment  
14 building under subsection 320.3, and variances to  
15 allow an elevator to be installed within an existing  
16 nonconforming closed court and to allow a parking pad  
17 to be constructed at the rear of a nonconforming  
18 structure under Section 403 and Subsection 2001.3, at  
19 the premises 2129 S Street, NW.

20 This is an R-3 District. It's Square  
21 2532, Lot 13. And the Applicant is here and ready to  
22 proceed.

23 Why don't we have everyone introduce  
24 themselves and we'll move right into the case.

25 MR. COLLINS: Thank you. Good afternoon.

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1 My name is Chris Collins of the law firm  
2 of Holland and Knight. Seated to my right is Kyrus  
3 Freeman from our office. To my immediate left is  
4 Vincent Hurteau, the Applicant, and to my far left is  
5 a Greg Kearley of Inscape Studios.

6 This is an application for variances to  
7 convert a 9,000 square foot, 55-1/2 foot tall, six-  
8 level building formerly used as a school for up to 200  
9 students for the last 60 years into a four-unit  
10 condominium in the R-3 Zone.

11 This application is for a use variance  
12 because the apartment use is not permitted in the R-3  
13 Zone. An area variance relief is also needed because  
14 the building is a nonconforming structure and we're  
15 adding an addition to a nonconforming structure and  
16 we're increasing the lot occupancy from about 75  
17 percent to about 95 percent to install a parking pad in  
18 the rear of the building adjacent to the alley.

19 An elevator will also be installed in the  
20 building within an existing closed port and the closed  
21 port is already included in the lot occupancy. So,  
22 the elevator does not add to the lot occupancy, but is  
23 an addition to a nonconforming structure.

24 The most recent certificate of occupancy  
25 issued for this building in 2002 indicates that it is

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1 for a school for 200 students. It does not indicate  
2 the number of faculty and staff. So, it's safe to  
3 assume that the maximum occupancy was over 200 people  
4 in that building.

5 The building was used as a school for 60  
6 years since 1945 for a number of different uses and  
7 could be used for a school today if, in fact, there's  
8 some school in the market, which there is not right  
9 now.

10 It was on the market for over 3-1/2 months  
11 and during that time as the witnesses will testify,  
12 there were only two interested buyers for the  
13 property. A number of people did come and look at it.

14 Only two expressed interest in it and both were for  
15 multiple dwelling use.

16 There was no interest expressed by any  
17 buyer, potential buyer, for any matter of right use or  
18 special exception use for this property. It is a  
19 unique building. It is by far the largest building on  
20 this side of S Street in this block. It is six  
21 levels, 9,000 plus square feet in the R-3 Zone.

22 It has a school configuration on the  
23 inside from a school used for over half a century and  
24 it's a sloping site.

25 As the evidence will show, it is too large

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1 for a single family dwelling. It is too large for a  
2 flat. It is too large for three units. It just  
3 doesn't configure well. We have testimony both from  
4 the owner who I offer as an expert witness in real  
5 estate brokerage and residential sales and also from  
6 the architect who we will offer as an expert in  
7 architecture.

8 A flat, I just note parenthetically, the  
9 flat, a two-unit building and a three-unit building  
10 would also require a use variance in the zone.

11 The building does measure about 4.24 FAR,  
12 although as you know, FAR is not calculated in the R-3  
13 zone. That's how big the building is.

14 The number of units as the witnesses will  
15 testify, the number of units to be put in the building  
16 is a function of a number of things. The building  
17 size, the layout of the units, the renovation costs  
18 and the market.

19 The building is not suited for matter of  
20 right uses. The demolition of the building or  
21 portions of the building is not an option. It is in  
22 an historic district. It's a contributing building.  
23 It's a very important building and it will be restored  
24 in accordance with the requirements of the Historic  
25 Preservation Review board.

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1                   The strict application of the use  
2 regulations here would impose an undue hardship on the  
3 owner.

4                   The certification of the area regulations  
5 would impose a practical difficulty, because it is  
6 desirable to add parking. The only way to add parking  
7 on this site and there?s only space for one car, maybe  
8 two, if you squeeze, is to put a parking pad in the  
9 rear off the alley to make a flat surface. The  
10 property does slope from the alley pretty severely  
11 down to the building. So, you would be parking on an  
12 angle of about 30 degrees or so. The plans will show  
13 the actual angle, which is impractical.

14                  The only other theoretical options would  
15 be to park in the front yard which is also not an  
16 option because it?s public space and historic  
17 preservation would never allow it. Or to put a garage  
18 door in the front of the building and park inside,  
19 which the Historic Preservation Review Board also  
20 would not allow.

21                  Finally, relief can be granted without  
22 substantial detriment to the public without  
23 substantially impairing the intent, purpose or the  
24 integrity of the zone plan.

25                  This will be a residential use in a

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1 residential zone in a residential neighborhood. It  
2 will be much, much less dense and much less traffic  
3 will come to the site with this four-unit condo than  
4 there was with the 200-student school.

5 The use that's proposed is consistent with  
6 the Board approved apartment house uses for the  
7 majority of the properties on the north side of S  
8 Street in the R-3 Zone between Connecticut and Phelps.

9 The building additions that are being proposed will  
10 not be visible from public space and do not add  
11 occupiable gross floor area to the building.

12 We've submitted a statement of the  
13 Applicant, which has a certain number of exhibits with  
14 it. I'll just quickly go through them.

15 Exhibit A shows the site on S Street.  
16 It's Lot 13. It's near the intersection of Phelps and  
17 S. B is the plat which shows the lot. It is 25 feet  
18 wide and very long, 85 feet in depth.

19 Exhibit C is a zoning map. You can see  
20 that it is in the R-3 Zone. The DR-3 zone is directly  
21 to the south. R-5B is a block away and the commercial  
22 area along Connecticut Avenue is half a block to the  
23 east.

24 Exhibit D is the original approval from  
25 1945 for school use of the property.

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1           Exhibit E is the most recent certificate  
2 of occupancy from 2002. And you'll see that under  
3 Description of Use it says proprietary school, student  
4 enrollment 200.

5           Exhibit F is the BZA order for the  
6 property to the east of the site. That property was  
7 part of the Holton Arms School. And as a matter of  
8 fact, this property was also a part of the Holton Arms  
9 School, which is now relocated to Maryland a number of  
10 years ago.

11           But 2125 S was a project that involved the  
12 creation of eight units in a building immediately to  
13 the east. There was a vacant parcel between this site  
14 and that building, which was developed with a single  
15 family dwelling. That's part of the outside of that  
16 project, but it's part of that whole development.  
17 Outside of that BZA part of the whole development.  
18 And then a portion of the building, the eastern most  
19 part of that building, 2125 S, which was an addition  
20 to that building many, many years ago with a firewall  
21 in between. That firewall was reintroduced or  
22 resealed up. A new front door was put in the eastern  
23 part of that building. That became a single family  
24 dwelling. The central part became an eight-unit  
25 apartment house. 2125 S and that is what Exhibit F

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1 is.

2 Exhibit G is a chronology of the other BZA  
3 approvals along the north side of S between  
4 Connecticut and Phelps in the R-3 Zone that were  
5 conversions from a variety of different uses into  
6 multi-family dwellings.

7 As a matter of fact, the majority of the  
8 frontage along the north side of S in the R-3 Zone  
9 between Connecticut and Phelps is multi-family  
10 dwelling. There's 115 linear feet of residential,  
11 single-family residential and 160 feet of multi-family  
12 condominium use, not counting this site.

13 Exhibit H is the set of plans which Mr.  
14 Kearley will address and then Exhibit I and K are the  
15 outlines of testimony of the witnesses.

16 Of course, we have ANC-2D. I met with the  
17 Applicant. He made a presentation and they  
18 unanimously and enthusiastically supported the  
19 application which he will describe for you.

20 I have two witnesses today unless there  
21 are any questions at this point.

22 CHAIRMAN GRIFFIS: Any questions right  
23 away? Clarifications?

24 Good.

25 MR. COLLINS: The first is Mr. Vincent

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1 Hurteau. Mr. Hurteau is the owner. He is also a  
2 realtor and I would ask that he list his  
3 qualifications and then after that I would ask that  
4 you accept him as an expert witness.

5 So, would you please identify yourself for  
6 the record?

7 MR. HURTEAU: I'm Vincent Hurteau. I have  
8 to speak close to this.

9 I'm Vincent Hurteau. I own Continental  
10 Properties. We have about 20 agents.

11 I've been in the real estate business  
12 since 1986, almost 20 years. I sell personally only  
13 D.C. I'm a real estate broker and I sell a lot in  
14 this neighborhood.

15 I can go into--shall I go into--

16 CHAIRMAN GRIFFIS: How long have you been  
17 in the business?

18 MR. HURTEAU: Since 1986.

19 CHAIRMAN GRIFFIS: How many properties do  
20 you list a year on an average?

21 MR. HURTEAU: I sell an average of about  
22 55 to 60.

23 CHAIRMAN GRIFFIS: And are they usually  
24 historic in nature and single-family type properties  
25 or are they large commercial buildings?

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1 MR. HURTEAU: Residential condos, co-ops  
2 and single-family house, primarily in historic  
3 neighborhoods.

4 I sort of joke about it. I live a block  
5 from this property, so it's mostly what I can walk to.

6 So, I do a lot of business in this neighborhood. But  
7 I do drive to some of my appointments.

8 CHAIRMAN GRIFFIS: Indeed. Any other  
9 questions? Follow-up? From the board.  
10 Clarifications on being proffered as an expert  
11 witness, Ms. Miller?

12 VICE CHAIRPERSON MILLER: Do you have any  
13 experience marketing for schools?

14 MR. HURTEAU: I don't. In fact, when I  
15 bought this property and I went to the ANC, I put  
16 notice to all the neighbors about the ANC meeting  
17 telling them that I'm proposing to make changes to  
18 this building and that I could either keep it a school  
19 or I could--I'd like to create it into condos. But if  
20 I keep it as a school, my plan was to hire a  
21 commercial broker because I do not deal with  
22 commercial real estate, so hire a commercial broker to  
23 lease the property.

24 VICE CHAIRPERSON MILLER: Thank you.

25 CHAIRMAN GRIFFIS: Anything else? Any

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1 other questions?

2 Is there any objection to Mr. Hurteau  
3 being offered as an expert witness in real estate  
4 sales and brokerage?

5 VICE CHAIRPERSON MILLER: It's in the  
6 residential area. Correct?

7 MR. HURTEAU: Residential.

8 CHAIRMAN GRIFFIS: Any difficulty?

9 I don't see any reason why we would  
10 preclude him from testifying as a expert witness. Why  
11 don't we move ahead.

12 Do you want to take both witnesses at this  
13 time, Mr. Collins, so we can move right into the  
14 witness.

15 MR. COLLINS: For expert? Sure.

16 The next person I would like to offer as a  
17 witness is Mr. Greg Kearley who is the principal and  
18 head of his own architecture firm. And I've submitted  
19 to the Chair copies of the curriculum vitae of the  
20 witness.

21 CHAIRMAN GRIFFIS: Questions?

22 MR. COLLINS: Mr. Kearley, would you like  
23 to summarize your experience?

24 MR. KEARLEY: My name is Greg Kearley.  
25 I'm the principal and founder of Inscape Studio. We're

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1 an architecture firm in D.C. We do about half our  
2 work with residential design. About half of that is  
3 single-family homes. The other half multi-family  
4 homes.

5 We've been around for about eight years  
6 and I don't know if I need to go any further than  
7 that?

8 CHAIRMAN GRIFFIS: No. I don't so. You  
9 were established in 1998 and you do new buildings and  
10 also renovation adaptations?

11 MR. KEARLEY: Both base building and  
12 renovation additions.

13 CHAIRMAN GRIFFIS: Okay. And mostly in  
14 the District of Columbia?

15 MR. KEARLEY: I'd say 75 percent of our  
16 work is regional, district or Maryland. Probably  
17 more. I'd say half of our work is in the District  
18 itself.

19 CHAIRMAN GRIFFIS: Excellent. Okay.

20 As the Board is aware, we have seen Mr.  
21 Kearley's firm presented before in projects before  
22 this Board.

23 Questions? Any other questions?  
24 Clarifications? Any objections to establish Mr.  
25 Kearley as an expert witness in architecture and

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1 design?

2 Very well. Let's proceed, Mr. Collins. I  
3 think we can take them both in as expert witnesses.

4 MR. COLLINS: Thank you.

5 Mr. Hurteau, would you please state your  
6 home address and then proceed with your testimony.

7 MR. HURTEAU: Okay. I live at 1705 21st  
8 Street, NW, which is literally around the corner from  
9 the subject property.

10 I've lived there since 1997. I brought  
11 this property in hopes to making it a condo, seeing  
12 that there are other condos on the block and  
13 converting it to a condominium and living in a larger  
14 unit of that property.

15 Shall I go on?

16 MR. COLLINS: Yes, please.

17 MR. HURTEAU: Okay. Great.

18 When I went to the ANC meeting as I  
19 discussed earlier, many of the neighbors knowing that  
20 there were several schools there before. There was a  
21 Kingsbury School that used to be there around to one  
22 side. The Holton Arms that this is a part of. So,  
23 there are many schools. A lot of faculty. People with  
24 cars, buses and other things.

25 And so the neighborhood when I proposed

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1 making a condominium, I faced almost no objection to  
2 it. In fact, the things that were brought up were  
3 primarily, especially the people from Bancroft, that  
4 my construction vehicles wouldn't block the alley so  
5 the trash could be picked up in the alley. That  
6 seemed to be their big concern. Apparently, there is  
7 other construction going on where they blocked the  
8 alley and then the trash trucks don't come down  
9 because of that.

10 But they were looking at--I mentioned I  
11 seen a school with 200 adults as it was just before I  
12 bought it and faculty and then make it into a four-  
13 unit condo. The congestion is far less and so I was  
14 overwhelmingly supported.

15 When I went the second time to the ANC,  
16 they had the vote and I was overwhelmingly supported  
17 to make it into residential condos.

18 The building itself is six levels. I sell  
19 real estate and I've sold tall houses and a tall house  
20 is usually three levels plus a basement. Every now  
21 and then there's a four-level house plus a basement.  
22 I've never seen in my real estate experience a six-  
23 level house. It is a freakish height of the house.  
24 It is to put it blunt. I don't know if any of you  
25 have ever experience or visited a house that has six

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1 levels. And this is a six-level house and that's one  
2 of the reasons why I wanted to make it into a  
3 condominium.

4 Now, I brought several exhibits and  
5 they're mostly in response to the Office of Planning.

6 And I realize they're late, but they're mainly in  
7 response or in rebuttal to the Office of Planning  
8 report. So, I brought them in a box back here which  
9 I'll pass around afterwards.

10 But I'll go over a few point, brief points  
11 about that.

12 Now, when I bought the house, it had been  
13 on the market for several months. At the same time  
14 there were a couple of other properties that sold  
15 quickly. There were properties that were residential  
16 in use. They weren't as tall and they had sold  
17 quickly.

18 This one has a--

19 CHAIRMAN GRIFFIS: What's quickly?

20 MR. HURTEAU: The one on, let me just find  
21 it here. One sold in zero days, 2344 California  
22 Street. That sold the same day. And 2336  
23 Massachusetts Avenue sold in 15 days. Both are  
24 single-family houses, not quite as large as this  
25 house, but both single-family houses.

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1                   The house was on the market 112 days at  
2                   2129 S. Street.

3                   CHAIRMAN GRIFFIS:     What was the price  
4                   range of the others?

5                   MR. HURTEAU:     The price range of the  
6                   others--

7                   CHAIRMAN GRIFFIS:     Is it comparable to  
8                   what this one was?

9                   MR. HURTEAU:     Comparable.    Yes.   And one  
10                  is more and the other two are higher.   I mean the  
11                  other one is higher.   The one on Massachusetts is  
12                  slightly less.   And the one on California Street is  
13                  higher.   But all in the same neighborhood, R-3 zoning,  
14                  etcetera.   And built as a single-family house.

15                  This place has been used as a school for  
16                  two-thirds of its life.   It has dropped ceilings.   It  
17                  basically looks like an office building or a school.

18                  CHAIRMAN GRIFFIS:     What are drop ceilings?

19                  MR. HURTEAU:     Drop ceilings are basically  
20                  this.   Instead of seeing the ceiling like this, you  
21                  would see tiles throughout.   So, that way you could  
22                  run electrical conduits, plumbing and other things and  
23                  not have to worry about changing things around.   And  
24                  so drop ceilings are used in office-type environments  
25                  or schools.

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1 CHAIRMAN GRIFFIS: so, is that an original  
2 feature of the single-family home?

3 MR. HURTEAU: It is not. It was added  
4 when it became a school.

5 Basically, the house has nine or ten  
6 restrooms but no bathrooms per se. It still says men  
7 and women or boys and girls on the restrooms.

8 So, the use of it is as a residential.  
9 It's going to take major construction.

10 CHAIRMAN GRIFFIS: What's left of the  
11 original detail or structure or anything in the house?  
12 You walk through it, what does it look like?

13 MR. HURTEAU: The original staircase which  
14 I plan to keep and in the second floor front room,  
15 which I also plan to restore has some of the original  
16 plaster molding in it that I plan to restore. Most of  
17 the other detail is long gone.

18 CHAIRMAN GRIFFIS: And there's six levels  
19 in this house. What was the formal floor on this? Is  
20 there a formal floor?

21 MR. HURTEAU: Yes.

22 CHAIRMAN GRIFFIS: How was it used as a  
23 single-family?

24 MR. HURTEAU: I can only surmise and just  
25 going through there and trying to guess how it was

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1 used and the layout. I was able to do a little  
2 detective work.

3 There?s a full basement and above the  
4 basement is the entry-level, the main floor where you  
5 walk in at a reception area with a kitchen in the very  
6 back.

7 You go up to the second floor for the  
8 living room in the front and the dining room which was  
9 almost as long as this room, was on the second floor.

10 The kitchen was not on the same level as the dining  
11 room. It had a small pantry and probably a dumb  
12 waiter and there?s remnants of a former back stairs in  
13 there, just one small piece of it that?s all that?s  
14 left of that.

15 CHAIRMAN GRIFFIS: So, all the service is  
16 on the first floor?

17 MR. HURTEAU: First floor and basement.

18 CHAIRMAN GRIFFIS: Kitchen.

19 MR. HURTEAU: Yes.

20 CHAIRMAN GRIFFIS: That?s where the staff  
21 would be in this big house I would imagine.

22 MR. HURTEAU: Yes. First floor and  
23 basement.

24 CHAIRMAN GRIFFIS: I see. So, in the  
25 elevation that we?re looking at in the record behind

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1       you, show me where the second floor is where the  
2       living room you said is.

3               MR. HURTEAU: That's the living room.

4               CHAIRMAN GRIFFIS: That's the living room.

5               MR. HURTEAU: This is the entry room.

6               CHAIRMAN GRIFFIS: I see.

7               MR. HURTEAU: Entry floor.

8               CHAIRMAN GRIFFIS: So, you have a whole  
9       floor that's just kind of entry?

10              MR. HURTEAU: Yes.

11              CHAIRMAN GRIFFIS: I see.

12              MR. HURTEAU: And then above this are  
13       bedroom. Three levels of bedroom levels.

14              CHAIRMAN GRIFFIS: Okay.

15              MR. HURTEAU: Bedroom floors.

16              One of the things about my making this  
17       into a condo is I want to live in the upper part and I  
18       also wanted it to make sense to get to the condo  
19       units.

20              In other words, instead of having one per  
21       floor, we have to consider access to it. So, I wanted  
22       to use the access from the first floor and try to make  
23       them so they are quickly accessible from the first  
24       floor. So, the units revolve around the basement  
25       first floor and then part of the third floor.

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1           Basically, I put them at the size that  
2 they are because they are not going to have parking.  
3 There?s going to be one parking space which I plan to  
4 take for myself. They are not going to have parking  
5 and large units without parking basically sell for far  
6 less per square foot which I also have an exhibit on  
7 that.

8           There was recently a sale at the building  
9 called the Wyoming. 2022 Columbia Road. It was a  
10 fourth floor unit and that one had sold for--let me  
11 find my piece of that. Yes. Here it is.

12           The fourth floor unit at the Wyoming sold  
13 for \$1,025,000. About \$380 per square foot. It did  
14 not have parking.

15           In a similar building, 2101 Connecticut, a  
16 first floor apartment, that did have parking but it  
17 was first floor. It wasn?t very bright. The Wyoming  
18 one was far brighter. It was slightly larger and it  
19 came with parking. That sold for \$625 per square  
20 foot. So, it?s a big difference.

21           If I were to make these into large units  
22 without parking, people who buy large units want  
23 parking. And if it doesn?t have parking, usually  
24 there has to be a big discount involved.

25           Smaller units, however, people are mostly

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1 used to in the real estate market not getting parking.  
2 They'd like parking, but they predominately do not  
3 come with parking.

4 In that case, I also have with the exhibit  
5 2115 S Street, which is similar in nature to the type  
6 of units that are creating similar size. 1,075 square  
7 feet and that one recently sold for \$582,000 basically  
8 \$541 a square foot.

9 The bottom line of what I'm saying is--

10 CHAIRMAN GRIFFIS: did it have parking or  
11 not?

12 MR. HURTEAU: No parking. No rental  
13 parking.

14 CHAIRMAN GRIFFIS: I see.

15 MR. HURTEAU: Yes. The bottom line of  
16 what I'm stating is, if you have a humongous unit  
17 without parking, it's to its detriment in units sale  
18 because people who buy large units expect that. And  
19 they have enough places with large apartments around  
20 to buy with parking, so that they must sell for a lot  
21 less per square foot.

22 These two are right by each other and  
23 close to the subject property. The one without  
24 parking, a condo on the fourth floor, sold for \$380 a  
25 square foot and the co-op on the first floor sold for

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1       \$625 a square foot and it included parking.

2               So, that's an economic hardship just on  
3       the difference of that and I have the copies of the  
4       multiple listing sheet with that in the exhibit.

5               Again, this comes in late, but it's in  
6       response to the other part.

7               Another thing too about the property is as  
8       you know, it has been a--let me just go to this.

9               I looked at two neighborhoods. Right  
10       behind it is Bancroft. Bancroft has 30 houses.  
11       Basically 30 single-family house. Thirty deeds,  
12       thirty houses. Actually, one of the deeds is for a  
13       garage that goes with the house. But it goes with the  
14       house and that's it.

15               Now, I pulled up the deeds, all the deeds  
16       for everything in the 2100 block of S Street, similar  
17       to pulling up everything on the 2100 block of  
18       Bancroft. I came up with 45 deeds.

19               Now, of those 45 deeds, what I found was  
20       there are only eight single-family houses. One also  
21       is a single-family house with a dentist office. Three  
22       are embassies, one has been a school, my property, and  
23       32 condominiums.

24               So, basically, this neighborhood, this  
25       immediate block, has always been similar and some

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1 people consider it almost part of Dupont, because it's  
2 similar in nature. It is predominately condominiums  
3 with a few embassies mixed in. It's a mixed-use  
4 block.

5 It is unlike Bancroft. And in the  
6 appearance it may look a little like it physically but  
7 it has always been different. And that's why I wanted  
8 emphasize, it's not changing --causing harm to the  
9 public good. It's hardly going to be a change and I  
10 think it will be for the better not to have large  
11 amount of students but instead four residential units.

12 But on that also I want to emphasize the  
13 2100 block of S, not only being a micro neighborhood,  
14 Dr. Singer who lives at 2110 S Street is a former head  
15 of the DCCA, Dupont Circle citizens Association, while  
16 he lived at 2110 S Street which he still lives today.

17 So, he was the president of the DCCA while  
18 living there on that block. That was considered and a  
19 lot of people still consider part of Dupont Circle.  
20 That block is completely different from Bancroft and  
21 the other blocks in Kalorama, which is zoned R-3.

22 And if you notice, we're right next to the  
23 different types of zoning, commercial and the  
24 residential zoning, R-5, I believe it is on 21st  
25 Street. So, it's almost been like seamless between

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1 those two neighborhoods. They are similar in nature.

2 And S Street has always been different from Bancroft.

3 And making this change to a freakishly  
4 tall six-level house, I cannot see possibly it being  
5 to the detriment and the neighborhood overwhelmingly  
6 supported me keeping it residential and making it four  
7 units.

8 CHAIRMAN GRIFFIS: Well, outside of the  
9 detriment which is, of course, the third when you get  
10 through the first two.

11 MR. HURTEAU: Sure.

12 CHAIRMAN GRIFFIS: What I understand your  
13 testimony to be is that part of its uniqueness--

14 MR. HURTEAU: Yes.

15 CHAIRMAN GRIFFIS: -- is the zoning  
16 history of this. I mean, this was built in 1910, I  
17 believe, it was or 1908 or 9?

18 MR. HURTEAU: Right around --

19 CHAIRMAN GRIFFIS: Turn of the century.

20 MR. HURTEAU: Yes.

21 CHAIRMAN GRIFFIS: Which is pretty clearly  
22 before 1958, R zoning was adopted.

23 MR. HURTEAU: Yes. That's right.

24 CHAIRMAN GRIFFIS: So, what you're saying  
25 that this in the R-3 in its mapping, this doesn't even

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1 really begin to fit that parameter. And I understand  
2 that pulling of the deeds, you're saying that the  
3 fabric of the block itself doesn't fit that parameter  
4 which adds to the uniqueness to the situation that  
5 this building is set in. Is that correct?

6 MR. HURTEAU: Precisely. If we were to go  
7 strictly by R-3 zoning, which the majority of the  
8 block does not go by.

9 CHAIRMAN GRIFFIS: Right.

10 MR. HURTEAU: In order words, we have 45  
11 deeds and we have 8 houses that are still single  
12 family that are 8 deeds for single-family houses only.  
13 And then a ninth one is mixed-use single-family plus  
14 a dentist office in the basement. Out of the 45  
15 deeds.

16 CHAIRMAN GRIFFIS: Okay. And you said  
17 that the six levels and the size of this lends itself  
18 to the specific uniqueness of this property.

19 I think it's probably going to be very  
20 advantageous if you also talk directly to what is the  
21 most difficult threshold with a use variance. And  
22 that as you stated in your submission, Palmer lays out  
23 very well. What other evidence is there that there is  
24 any conforming use that could bring a fair or  
25 reasonable return on your investment?

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1                   You've indicated the comparison of condos.  
2                   You've indicated that if you were going to go for a  
3 school, you would have hired a commercial realtor.

4                   MR. HURTEAU: Yes.

5                   CHAIRMAN GRIFFIS: Is there any steps just  
6 investigating if there was that outside of how long it  
7 sat on the market or shall we hear more about how long  
8 it sat on the market in comparison to comparables that  
9 took a few days to leave?

10                  MR. HURTEAU: Well, it sat on the market a  
11 long time because there were no schools that were  
12 willing to pay that. There's no schools that  
13 expressed interest enough to write a contract.

14                  One other contract expressed interest and  
15 they wanted to have it contingent upon a--actually a  
16 BZA meeting and I was told by the listing agent. And  
17 the owner said we don't want to wait for that. We  
18 don't want to wait that amount of time.

19                  Basically, I took the chance. I bought  
20 the property with the chance that going to BZA meeting  
21 thinking--basically assuming that based on the way the  
22 block is, that this would not greatly change it, that  
23 it's likely to be approved.

24                  The owner would not take a contract  
25 contingent upon a BZA meeting.

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1 Now, I did not meet the other prospective  
2 buyer, but I can only imagine being a developer as  
3 opposed to me who I want to live in the property, so I  
4 want to live in the larger unit in it. I can only  
5 imagine to maximize the profit on this building, would  
6 be to make far more units out of a 9,000 plus square  
7 foot building, which what I want to do is merely for.

8 MR. COLLINS: Could you talk a little bit  
9 about or you did, but kind of bring it back full  
10 circle about the fact that, did you think about in  
11 developing this, a two-unit building? Did you talk  
12 about a two-unit?

13 MR. HURTEAU: Yes.

14 MR. COLLINS: Would you talk about that a  
15 little bit?

16 MR. HURTEAU: I did think about two units.  
17 The problem is because of the one parking space. It  
18 could be made into a two-unit condo but the problem is  
19 is just with the one parking space. The unit has to  
20 be small enough where not having parking is not to its  
21 detriment for its sale. And many of the units on the  
22 block in the 2115-2117-2107 S Street do not have  
23 parking with them. And they are smaller. Around the  
24 size that I'm proposing between 1,000 and 1,200 square  
25 feet roughly, two-bedroom apartments. And so basically

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1 my idea was to mimic those, those sizes, and put those  
2 in here and then live in the rest of the building.

3 MR. COLLINS: What about three units?

4 MR. HURTEAU: Again, three units would be  
5 then two still fairly large units. Once you get above  
6 about 1,200 square feet, to have three units would  
7 have to be larger and once you get above that, the  
8 price drops considerably because once you get to a  
9 point of a property without parking, even if it's big,  
10 it makes it a difficult sale. It really has to stay  
11 closer to 1,000 to 1,200 or smaller.

12 MR. COLLINS: During the time that you--  
13 the 3-1/2 months. Was 3-1/2 months an unusually long  
14 period of time for the property to be on the market?

15 MR. HURTEAU: At that time. Yes. Yes.  
16 At that time it was. It was a spring market, which is  
17 generally strong at that time of the year it was.

18 MR. COLLINS: and you've given two  
19 examples of buildings, one that sold the same day and  
20 one a short period of time thereafter.

21 MR. HURTEAU: Yes.

22 MR. COLLINS: Was that generally the  
23 pattern of sale?

24 MR. HURTEAU: That was the pattern of the  
25 spring market. Yes.

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1 MR. COLLINS: Of real estate generally?

2 MR. HURTEAU: Yes. In especially that  
3 neighborhood. And both were single-family houses.

4 MR. COLLINS: Okay. And the other uses  
5 that are allowed are a House of Worship, a charter  
6 school, public school, home for handicapped  
7 individuals?

8 MR. HURTEAU: I mean it was listed as both  
9 commercial and residential, this property. So, it was  
10 because of the school use, agents had access to it.  
11 They were aware of it. It was listed with Randall  
12 Hagner Company, which has a separate commercial  
13 brokerage. So, it was fully out there in the  
14 commercial market for people to know if was for sale.

15 It was also listed in the residential  
16 section and it was just myself and the other real  
17 estate developer that had an interest in the property.

18 VICE CHAIRPERSON MILLER: Did you say it  
19 didn't sell to a school because the school wouldn't  
20 pay the price?

21 MR. HURTEAU: Actually, I don't know,  
22 because I don't sell commercial real estate. But what  
23 I do know is that there was no interest expressed by a  
24 school or by anybody for a commercial use for the  
25 property.

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1 MR. KEARLEY: Could I make a comment to  
2 that?

3 We've done a number of schools, day care  
4 centers, community centers and what not. It's very  
5 difficult to do something like that on six floors,  
6 because of the circulation. So, I would say the  
7 physical nature of the building itself, if not  
8 prohibitive for, I mean, obviously, there was a school  
9 in there at the time. But to get it code compliant,  
10 especially if you're talking about children or non-  
11 adult school. It's very difficult situation with six  
12 stories. And not ideal is you're talking about even  
13 an adult school.

14 So, it is a little bit strange that you  
15 don't typically see that type of space used for  
16 schools. Now it's zoned for that and there was one  
17 there and it has a history of that, but I think in  
18 terms of spending two million for that and then the  
19 amount that it would cost to make improvements to that  
20 would be somewhat prohibitive for a school to purchase  
21 that and do those types of things.

22 VICE CHAIRPERSON MILLER: Do you know why  
23 the school left that was in there?

24 MR. HURTEAU: Actually, it was a, as I  
25 understand it, a Japanese internship program and they

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1 basically became defunct. They are no longer in the  
2 business. After settlement, the school was closed.

3 VICE CHAIRPERSON MILLER: Okay. And to  
4 your knowledge, the property was marketed both  
5 commercially and residential?

6 MR. HURTEAU: Yes. Yes. By the Randall  
7 Hagner Company.

8 VICE CHAIRPERSON MILLER: Okay.

9 MR. HURTEAU: In fact, sometimes people  
10 list their property with an agent who does solely  
11 residential real estate. This was done where it's a  
12 company that does it in-house both residential and  
13 commercial, which is unusual.

14 CHAIRMAN GRIFFIS: Anything else?

15 VICE CHAIRPERSON MILLER: Thank you.

16 CHAIRMAN GRIFFIS: Yes. Mr. Hood.

17 MR. HOOD: Let's look at the elevator. Is  
18 the elevator going to be--

19 CHAIRMAN GRIFFIS: Pull that mike around.

20 MR. HOOD: I'm sorry. Can you hear me?  
21 Okay.

22 Is the proposed elevator going to be on  
23 the inner working--inner part of the building or is it  
24 going to be an extension from the outside?

25 MR. HURTEAU: There's going to be a very

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1 small extension. It goes five floors down. It's a  
2 light well air shaft that goes five floor down. But  
3 because of the building on this level, the court only  
4 goes up to this ledge here. I'm sorry.

5 CHAIRMAN GRIFFIS: Yes. Hold that. That  
6 comes out of the base if you want to pull it.

7 MR. HURTEAU: Oh, sorry. There we are.

8 Okay. Can you hear me now? Okay.

9 It goes all the way through the building,  
10 the shaft, but it goes up to this wall here and so  
11 what I'm basically proposing to do is have a hydraulic  
12 elevator. That way no machinery is needed above so it  
13 can go up to about this level and not higher. So,  
14 basically, it's going to be added from here to here,  
15 if you could see that.

16 So, it's just basically this amount of  
17 space.

18 CHAIRMAN GRIFFIS: You're talking about  
19 the overrun.

20 MR. HURTEAU: For the elevator.

21 CHAIRMAN GRIFFIS: You're talking about  
22 the placement of it?

23 MR. HOOD: Yes. I was talking about the  
24 placement. That leads me to my next question.

25 Hydraulics won't require a machine room?

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1           MR. HURTEAU: Actually, since the elevator  
2 will go from the first floor up and not to the  
3 basement, the mechanics part will be underneath.

4           MR. HOOD: So, hydraulic, that's the one  
5 with the piston where you have to drill down?

6           MR. HURTEAU: Actually, I'm not sure.

7           MR. COLLINS: You would typically go down  
8 a floor from below where you're entering the first  
9 floor of the elevator and since we're entering at the  
10 first floor and not the basement, the housing for the  
11 elevator will be on the basement level. So, we won't  
12 have to dig down farther.

13          MR. HOOD: So, you won't have to dig--  
14 that's my point. The machine room is going to be in  
15 the basement so--

16          MR. HURTEAU: Exactly.

17          MR. HOOD: --the piston will not have to  
18 go into the ground.

19          MR. HURTEAU: That is correct.

20          MR. HOOD: Okay.

21          MR. KEARLEY: That is correct.

22                 Now, we're working with a structural  
23 engineering to design this so there's no problems with  
24 any neighboring properties and we're not dealing with  
25 integrity of either the adjacent property or our

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1 property, because we are going to have to do some work  
2 in that shaft to get this ready for an elevator. So,  
3 they'll be some work there, but it will all be within  
4 the boundaries of our property and it will all be  
5 within that closed court, which is an existing closed  
6 court which is a nonconforming court. So, we're  
7 actually getting rid of a nonconforming part of the  
8 building.

9 MR. HOOD: Okay.

10 MR. HURTEAU: Also, I'd like to add to it  
11 briefly.

12 Because it's set back--okay. Because it's  
13 set back so far in the ledge, it's not visible from  
14 the street as well. So, since we're coming up where  
15 number one is, coming up just slightly, it's not  
16 visible from the street. So, it's going to be pretty  
17 well hidden.

18 MR. HOOD: Okay. All right. Thank you.

19 MR. HURTEAU: Certainly.

20 CHAIRMAN GRIFFIS: While we're on the  
21 elevator, can you just explain a little bit how and  
22 where it accesses?

23 MR. COLLINS: That goes into the  
24 architecture.

25 CHAIRMAN GRIFFIS: Okay. We're going too

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1 far ahead.

2 MEMBER ETHERLY: So, if you're finished  
3 with Mr. Hurteau. Are there any questions of Mr.  
4 Hurteau?

5 Unless if there are any questions of Mr.  
6 Hurteau, we could finish those up and then go to Mr.  
7 Kearley.

8 CHAIRMAN GRIFFIS: Questions?

9 MEMBER ETHERLY: Let me follow on the  
10 conversation that you had with Ms. Miller regarding  
11 the issue of the units. I just want to make sure I  
12 understand the argument that's being offered.

13 So, in this particular area, maybe not  
14 generally speaking, but just in this particular area,  
15 it's your experience that if you were to go to larger-  
16 sized units, which perhaps I in my layman's experience  
17 might think, well, that's more of a benefit for me as  
18 I'm looking at potential properties for residential  
19 use.

20 It's your sense that the larger you go the  
21 more requirement, off-street parking will be for that  
22 potential purchaser?

23 MR. HURTEAU: Yes.

24 MEMBER ETHERLY: Okay. So, if you were to  
25 downgrade to two or three units, it is your experience

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1       that you would be very hard-pressed to find a market  
2       for that type of unit without a vehicle space?

3               MR. HURTEAU:   Well, there?s a market for  
4       every unit, but the price would drop dramatically.

5               MEMBER ETHERLY:   Okay.

6               MR. HURTEAU:       And thus a financial  
7       hardship.   And that?s why I pointed out those two  
8       properties because the one selling without parking.

9               A lot of other buildings out there that  
10       were built or converted that have larger units have  
11       generally more parking available for them with the  
12       exception of a handful that do not.   But a lot of  
13       building with like 2101 Connecticut, for example, had  
14       land behind it.   They made a two-level garage.   2029  
15       Connecticut did the same thing.   They made a two-level  
16       parking area for it.   So, people are often times used  
17       to getting parking.

18               So, when there?s not parking available for  
19       it, the price must go down to reflect that.   Because  
20       people want that in larger properties, especially a  
21       million plus.

22               MEMBER ETHERLY:   And you may, perhaps,  
23       have touched upon this in your earlier testimony, but  
24       as was noted in the Office of Planning report, there  
25       is some precedent for large-scale single-family homes

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1 in the immediate area. Could you perhaps just speak  
2 to again why you feel a single-family home in this  
3 particular instance just is entirely not feasible?

4 MR. HURTEAU: Well, one property, 2113 S  
5 Street which is on the market right now, is five  
6 levels. Five levels are very unusual, but that has  
7 been for sale now for probably at least six months.  
8 They just dropped the price now to under two million.

9 I do not have the exhibit for that. That is in the  
10 MRIC or homesdatabase.com. But that one has been for  
11 sale for along time.

12 It?s harder to sell generally taller  
13 houses. If they have an elevator, that usually helps,  
14 but usually just because functioning as a single unit  
15 with so many floors. Five levels are generally harder  
16 to sell.

17 But I?ve never ever seen a six level  
18 single family house. Nobody I know knows of that and  
19 I don?t know if any of you have ever experienced a  
20 six-level family house.

21 MEMBER ETHERLY: I believe Mr. Hood has an  
22 experience with a six-level personal residence, but  
23 that?s beside the point. Okay.

24 Okay. Thank you.

25 CHAIRMAN GRIFFIS: Any other questions at

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1 this time?

2 VICE CHAIRPERSON MILLER: I just have one  
3 on the parking.

4 Just a follow up. And I don?t now if this  
5 is for Mr. Collins or Mr. Hurteau.

6 But it?s a practical difficulty here just  
7 waiting for a request for a variance for the parking,  
8 the dramatic difference in price that you?re just  
9 referencing for providing parking with a unit.

10 MR. HURTEAU: Well, it?s--I?ll let you  
11 comment on that.

12 MR. COLLINS: If I could, just clarify  
13 that, the issue of the practical difficulty of the  
14 parking is different than the use variance standard  
15 under hardship. The practical difficulty with parking  
16 is that we can provide parking if we can provide it on  
17 a parking pad that sits at a 30 to 40 degree slope,  
18 which in real life you can?t. You can?t drive off  
19 that alley and down at an angle and expect the car to  
20 stop before it hits the building.

21 VICE CHAIRPERSON MILLER: But you?re not  
22 required to provide parking?

23 MR. COLLINS: We?re not required to  
24 provide it. No.

25 VICE CHAIRPERSON MILLER: But he wants to

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1 provide parking because--

2 MR. COLLINS: If you want to provide  
3 parking, there's no place to put it. It's a practical  
4 difficulty. You cannot provide any parking anywhere  
5 on the site without putting a parking pad.

6 CHAIRMAN GRIFFIS: I guess your question  
7 would be then, what's the relief you're actually  
8 seeking?

9 MR. COLLINS: It's lot occupancy.

10 CHAIRMAN GRIFFIS: Right. It's going to  
11 lot occupancy because that's above the main level of  
12 the residential. So, that pad coming across is  
13 increasing the lot occupancy.

14 MR. COLLINS: The pad here. This is the  
15 alley. I'm point to A-302 on the very right-hand side  
16 is the alley. There's a wall that's to be put in with  
17 a parking garage door type of a thing. And a parking  
18 pad that sits flat, that sits over the hill that goes  
19 down. It's almost the grade that --the elevation of  
20 the alley in the rear is almost one full floor above  
21 the elevation in the front of the building.

22 So, the severe slop and all the slope  
23 takes place in the back of the building. So, it's all  
24 back there. It's about 30 feet. So, you couldn't  
25 park there. That's the practical difficulty. You

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1 cannot park there.

2 VICE CHAIRPERSON MILLER: But isn't there  
3 a practical difficulty that you need to identify for  
4 having that extension in the lot occupancy to begin  
5 with? It would be that you don't have a place to  
6 park. Is that right?

7 MR. COLLINS: That's right.

8 VICE CHAIRPERSON MILLER: And parking is  
9 desirable?

10 MR. COLLINS: Right. And that's the  
11 practical--there's no place. We cannot provide  
12 parking anywhere on the site without that parking pad.  
13 That's the practical difficulty.

14 VICE CHAIRPERSON MILLER: Okay. I'm just  
15 trying to fit it into the variance test.

16 But is the reason that you want to provide  
17 that because it's desirable? to have parking or  
18 because it's an economic difficulty if you can't sell  
19 parking with a--

20 CHAIRMAN GRIFFIS: I'm confused as to why  
21 we're asking them to tell us what the reason is to  
22 provide it as part of the variance test?

23 VICE CHAIRPERSON MILLER: I'm trying to  
24 figure the practical difficulty if they don't.

25 MR. COLLINS: The practical difficulty is

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1 the inability to provide parking anywhere on the site.

2 CHAIRMAN GRIFFIS: And the slope at the  
3 rear.

4 MR. COLLINS: Parking is not required.  
5 The credits, the parking credits that are available  
6 from the school use far outweigh the parking  
7 requirement for this four-unit building. So,  
8 therefore, no parking is required.

9 However, we want to provide it, but the  
10 only place to provide it is on level or fairly level  
11 surface. There is no level surface that is on private  
12 property.

13 We have several options to do it. One is  
14 to put the parking pad from the alley, which makes the  
15 most sense because everyone else has parking from the  
16 alley who does have parking in that square. The other  
17 option would be to put a parking garage door in the  
18 front of the building which clearly in an historic  
19 building like this would not be acceptable. And the  
20 third option would be also not acceptable to park in a  
21 driveway in front of the building, which the historic  
22 preservation --

23 VICE CHAIRPERSON MILLER: Right.

24 MR. COLLINS: -- didn't like time and time  
25 again.

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1 VICE CHAIRPERSON MILLER: I heard you  
2 about as far as there are practical difficulty in  
3 providing parking anywhere else other than that place.

4 My question is, if you don't provide the  
5 parking at all in that place, you would need to get a  
6 variance from the lot occupancy there. Who would  
7 suffer the practical difficulty? The owner of the  
8 building? Somebody in a unit? Who would--

9 MR. COLLINS: the practical difficulty.  
10 As I understand the practical difficulty test in that  
11 context, the practical difficulty goes to the physical  
12 practical difficulty in providing what you're trying  
13 to provide.

14 VICE CHAIRPERSON MILLER: Okay.

15 MR. COLLINS: If you can't put the parking  
16 anywhere else but that. If you couldn't put a deck  
17 anywhere except in the rear yard. If you couldn't put  
18 your kitchen anywhere except in the side yard.

19 As long as a variance is not person to the  
20 Applicant. That's not our situation here. It's not  
21 for reasons personal to the Applicant. It's the  
22 practical difficulty of being physically unable to put  
23 parking anywhere on that site without having to put  
24 this pad on which increase lot occupancy. That's our  
25 practical difficulty.

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1 VICE CHAIRPERSON MILLER: Okay. Thank  
2 you.

3 MR. COLLINS: Okay.

4 MR. HURTEAU: We went through this with  
5 the neighbors too at the ANC meeting about that. And  
6 when I spoke to Kindy French we went over different  
7 types of design of this. Because the alley is filled  
8 with parking spaces back there. It's pretty much what  
9 the majority of the alley is. And so if you want to  
10 make sure that the part over that is brick, and so on  
11 so I went over that and I'll go over that further if  
12 everything is approved with the historical people.  
13 But it wouldn't deviate from -- in other words, if you  
14 look at it from the back alley, it's not going to  
15 deviate from the other properties around it.

16 Right now there's an existing wall. You  
17 can't tell behind that wall that there's a drop. And  
18 then that existing wall would have a type of garage  
19 type door, without a garage. And then a brick  
20 surround.

21 So, basically the practical appearance of  
22 it is basically you see these garage door and then you  
23 see our brick wall. Instead of all brick wall, it's  
24 brick surround with a garage door.

25 Most people have no idea behind there that

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1 there's that drop. So, the appearance from the rest  
2 of the houses. That's one of the things my neighbors,  
3 none of seem to have any objection. In fact, they'd  
4 like to see a var up the street instead of taking  
5 another spot.

6 For two or three units, if I were to do  
7 two or three units in this property, the bottom line  
8 is economics. It's just they would have to be, if I  
9 had larger units, they would sell less per square  
10 foot. And that was far less per square foot without  
11 the parking.

12 There gets to be a point of which when  
13 it's closer to 1,000 square feet where it's almost  
14 expected and it's usually a bonus if it has parking  
15 and you usually charge accordingly for that.

16 Incidentally, when I bought my parking  
17 space, I bought a condo parking space on 21st Street  
18 and this is seven years ago. I paid \$50,000 for an  
19 outdoor space, just because it's--my house doesn't  
20 have it and I wanted to have parking and I was offered  
21 a lot more money for it when I recently sold that  
22 house. And so it's a valuable thing, but where the  
23 condo at 1721 21st Street is, most of the units there  
24 do not have parking, but they still sell quickly  
25 without out. They are mostly 1,000 square feel or

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1 less.

2 Basically, if the project were to be made  
3 into two or three units, it's just not--it's two and a  
4 half million to buy the property and with the cost of  
5 construction to make it two or three units, because of  
6 the price per square foot of selling the other large  
7 units without parking, it's just not feasible.

8 I'm not buying this to make --to build a  
9 big profit. In fact, what I'm trying to do is just to  
10 defer the cost. Not defer the cost but lower the cost  
11 of my living in my unit by selling the other units.

12 But basically, it would just be  
13 prohibitively expensive if I had two other larger  
14 units selling for less for that versus the  
15 construction costs. It just doesn't--the cost is  
16 prohibitive for that.

17 MEMBER ETHERLY: Mr. Chair, if I could  
18 follow up on that question from Ms. Miller.

19 I think perhaps the struggle is, maybe not  
20 so much of a struggle but trying to illustrate, is the  
21 difference between the sale price in a two to three  
22 units building compared to what you're proposing such  
23 that it creates an entirely unacceptable or downright  
24 ludicrous absence of a return on your investment. Or  
25 is it the case that it just allows you to --it would

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1 result in selling the units for a lesser amount  
2 understood than what you would be able to sell them  
3 for in a four-unit building.

4 Perhaps the challenge is trying to get a  
5 sense of what your break-even point is because I think  
6 we probably have a little bit of an absence of data in  
7 terms of what is your starting point? What is your  
8 break-even point? And where does it just absolutely  
9 go down hill for you financially?

10 MR. HURTEAU: Sure. Well, let's look at  
11 numbers.

12 The price of the property was two and half  
13 million. Construction costs were going to be a  
14 minimum 1.5 million. That's 4 million. The sales of  
15 the units are probably going to be around somewhere  
16 between what I'll get from them is somewhere between  
17 1.5 and 1.7 million.

18 Basically, if I do the project as it is,  
19 and I were to sell my own unit, I would break even on  
20 the project and not make any profit. Anything other  
21 than that would be pretty much a loss.

22 MEMBER ETHERLY: And that would be if,  
23 when you say if you did 1.5 to 1.7 million per unit in  
24 what would be a what, a four-unit building?

25 MR. HURTEAU: A four-unit building.

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1 MEMBER ETHERLY: Okay.

2 MR. HURTEAU: 1.5 to 1.7 for the total  
3 sale of the other three units.

4 MEMBER ETHERLY: Okay. .

5 MR. HURTEAU: And then the--then my unit  
6 itself would probably be worth somewhere around 2 to  
7 say maybe 2.2 or something like that or 2.3. So,  
8 basically, I'm looking at breaking even or possibly  
9 losing money. But the reason why I did this. When I  
10 went into this property, I went up to the terrace  
11 that's up there on the top level. And it has this  
12 incredible view of the entire city. It is gorgeous.  
13 I saw that and I thought I have to have this building.  
14 I really want to move into this property and I want  
15 to make it work.

16 And I talked to neighbors. I talked to  
17 Greg as an architect and I consulted many people  
18 before doing that. But I saw that and I thought I  
19 really would love to live here.

20 One thought was to maybe have it as a  
21 school and have it for awhile and down the road  
22 possibly convert it later on. But I thought No. I'd  
23 really like to live there. It's a great space.

24 So, as the current numbers go, I'm likely  
25 to break even or possible lose a little bit in value.

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1 But for me it?s a trade off because I love that view.  
2 It?s going to be a great space when it?s done.

3 MEMBER ETHERLY: Okay.

4 MR. HURTEAU: And I?m going to enjoy  
5 living there.

6 MEMBER ETHERLY: Okay. So a very important  
7 point.

8 As the project is currently proposed, you  
9 are literally as you said at break even or even a  
10 little bit below.

11 MR. HURTEAU: Yes.

12 MEMBER ETHERLY: If you were to drop to  
13 three units or two units, obviously that purchase  
14 price for those units would have to rise and it?s your  
15 testimony that that would be a very highly unlikely  
16 scenario for a potential purchaser looking at this  
17 particular property in this particular market based on  
18 your experience with the market over the years.

19 MR. HURTEAU: And the price would have to  
20 be adjusted to account for the lack of parking for  
21 those larger units.

22 MEMBER ETHERLY: Okay. And have you put  
23 together any data or run through specifically the  
24 construction side of this? Maybe that begin to merge  
25 us into the architectural presentation or another

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1 portion of the testimony. But have you put together  
2 an indication of kind of what the construction costs  
3 that you're looking at? Is that 1.5 a firm number or  
4 are there any corners that you can cut there to get it  
5 down to \$500,000?

6 MR. HURTEAU: Well, actually, I consulted.  
7 Right now, I basically didn't spend as much time  
8 doing the--we're working on the final plans, but until  
9 this happens today, I didn't want to jump 100 percent  
10 into it.

11 So, basically, the preliminary figures and  
12 these are only preliminary from two different  
13 construction companies, the Lee Group and Vogan  
14 construction bot said it's going to be at least \$1.5  
15 million.

16 Now, often times those numbers don't go  
17 down, but they go up unfortunately.

18 MEMBER ETHERLY: Okay.

19 MR. HURTEAU: So, it could become more  
20 expensive.

21 MEMBER ETHERLY: Okay. And let me jump,  
22 if I could, to Mr. Kearley very quickly because there  
23 was an exchange you had with Ms. Miller on the issue  
24 of the former school use. And I just wanted to  
25 perhaps put a pin in something that you said.

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1           That is the issue of the cost that would  
2           be entailed for a particular--a potential school user  
3           to purchase this property and get it up to code. You  
4           said code compliance.

5           Is it your sense that based on our  
6           awareness, familiarity with this property, that there  
7           would indeed be a significant amount of code  
8           compliance work that would have to be done? This  
9           could not be a turnkey purchase for any school that  
10          would seek to operate in this building?

11          MR. HURTEAU: Someone could move in as is.  
12          It's pretty dated, the design and the finishes and  
13          the systems. So, I would think there would need to be  
14          substantial work to tailor it to a specific need.

15          This was a school for, I believe, for  
16          language.

17          MR. HURTEAU: It was an internship program  
18          for Japanese business people coming to the U.S.

19          MEMBER ETHERLY: Okay. So, it was adult  
20          business users.

21          MR. HURTEAU: And learning English but  
22          typically spaces need to be modified once people move  
23          in and new people, you know, people move out and new  
24          people move in. And to get it compliant, there would  
25          be significant costs to do so.

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1 MEMBER ETHERLY: Okay. Thank you.

2 MR. HURTEAU: And it's also a difficult  
3 situation when you're dealing with an historic  
4 neighborhood too to make things compliant.

5 MEMBER ETHERLY: Okay. Thank you.

6 Yes, sir.

7 MR. HURTEAU: If I might add, there's no  
8 sprinklers in the building. It's one unit air  
9 conditioning. I plan on adding sprinkler as part of  
10 my conversion.

11 MEMBER ETHERLY: Okay. Thank you. Thank  
12 you, Mr. Chair.

13 VICE CHAIRPERSON MILLER: I'm sorry. Just  
14 wanted to ask one more followup question on the  
15 parking so I have the whole picture.

16 Have you decided, is the parking pat for  
17 you is it going to be--

18 MR. HURTEAU: Yes.

19 VICE CHAIRPERSON MILLER: -- for a tenant?

20 Oh, it's for you.

21 MR. HURTEAU: It's for me.

22 VICE CHAIRPERSON MILLER: so, it's not  
23 really related to the economic question?

24 MR. HURTEAU: If I resell the unit it  
25 would be.

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1 VICE CHAIRPERSON MILLER: Oh, if you  
2 resell. Right.

3 MR. HURTEAU: Yes.

4 VICE CHAIRPERSON MILLER: Okay. Thank  
5 you.

6 CHAIRMAN GRIFFIS: Anything else?

7 MR. COLLINS: Just finally, Mr. Hurteau,  
8 you have read and are familiar with the statement of  
9 the Applicant that was submitted in the BZA  
10 application here today?

11 MR. HURTEAU: Yes.

12 MR. COLLINS: Do you adopt this as your  
13 testimony?

14 MR. HURTEAU: I do.

15 MR. COLLINS: Okay.

16 Now, Mr. Kearley, would you please  
17 identify yourself for the record and proceed with your  
18 testimony?

19 MR. KEARLEY: My name is Greg Kearley.  
20 I'm the principal of Inscape Studio. And we're  
21 located at 1215 Connecticut Avenue in the District.

22 We touch bases on a lot of architectural  
23 questions just in the testimony of Vince and the  
24 dialogue that we've had. I'll talk just briefly on a  
25 couple of items.

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1 I think first there was a question someone  
2 had on the elevator. Do you want me to go through  
3 that? Or is that something that's been resolved?

4 MR. MANN: Well, perhaps you can start by  
5 explaining what the purpose of the elevator is.

6 MR. KEARLEY: The purpose of the elevator  
7 is for the main unit which is the owner's unit since  
8 this is a six-story building and everyone does enter  
9 on the first floor, it's a convenience for the  
10 particular unit.

11 MR. MANN: And do I understand the plans  
12 correctly that the elevator opens only onto that unit?

13 MR. KEARLEY: Only onto that unit. And if  
14 you look at the basement plan, which is A101, that's  
15 where the elevator pit and any mechanical systems that  
16 go along with that will be located. And then the  
17 first floor is the first floor that it becomes  
18 operational. So, the basement area is where we're  
19 going to have the elevator pit and the hydraulics and  
20 if there's any machine room, there's a closet next the  
21 elevator pit that we can use as the machine room if  
22 needed. I mean, we haven't as Vince has noted we  
23 haven't gone through and detailed and done the  
24 engineering on these items until we know if this is a  
25 viable project. But the plan is that we're going to

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1 use the basement and then it starts on the first floor  
2 and it serve only Unit Number 4 which is the owner's  
3 unit.

4 MR. MANN: And can you explain the code  
5 requirements for having the elevator in the building?

6 MR. KEARLEY: I don't believe there is a  
7 code requirement. If you have a building that's over  
8 three--and this I think contradicts something that  
9 we've written in here, but maybe someone on the Board  
10 might have some knowledge on this.

11 If you have a--if you're in a residential  
12 multi-family above three floors or four floors or  
13 above, you need to have an elevator by code.

14 MR. KEARLEY: Well, first of all, let me  
15 put on the submission, the written submission does say  
16 the building code requires that there be an elevator  
17 in the building. But explain

18 MR. KEARLEY: Exactly. The reason--it's a  
19 gray area here and what it is is when you've above  
20 three stories, which we are, and it's a multi-family  
21 use, you're required to have an elevator by code.  
22 Okay. But we're accessing a particular unit on the  
23 first floor, not on the fourth floor. And so whether  
24 or not--the gray area is whether or not it complies--  
25 whether or not since you're entering on the first

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1 floor, since it's not an egress situation, it's not an  
2 elevator for that. But it is a convenience elevator  
3 within this particular unit.

4 So, even though we're going to the fourth  
5 and fifth floor, we're still accessing the unit from  
6 the first floor. So, that's why I don't think that we  
7 need to have that to be code compliant.

8 MR. MANN: And are there--

9 MR. KEARLEY: Does that make sense? Is  
10 that sort of clear since we're not--

11 MR. HURTEAU: I think actually it's a code  
12 gray area because generally it doesn't state so  
13 specifically for a project like this. So, I think  
14 what Greg is saying, there could be a chance that this  
15 could be an exception to that. There may be a chance  
16 to be an exception to an elevator because egress is  
17 from the first floor.

18 There's some buildings where a unit you  
19 can only get to it. It starts on the fourth floor and  
20 there must be an elevator access to get up to that  
21 because the beginning of that apartment is on the  
22 fourth floor.

23 MR. KEARLEY: Exactly.

24 MR. HURTEAU: So, an elevator would be  
25 definitively before code.

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1           So, I think what Greg is saying is because  
2       access is on the first floor, there could be an  
3       exception to that rule because even though there is a  
4       fourth floor and a fifty floor, there could be an  
5       exception to this. General thought is that it must be  
6       to code to have an elevator there. But I think what  
7       Greg is saying that even though despite what we wrote,  
8       there could be an exception to that since egress is  
9       already from the first floor.

10           MR. MANN: Well, I guess the question that  
11       results from this then is, is there an alternative  
12       place that the elevator could be placed in the  
13       building. And does that matter in regard to the  
14       relief that you're requesting anyway?

15           MR. COLLINS: I there is not an  
16       alternative because the proposed code already counts  
17       lot occupancy. It's the most logical, setting aside  
18       the regulations, from logic, it's the most logical  
19       place to put it. It's a cut out in the footprint of  
20       the building that counts in lot occupancy that we  
21       can't use for any purpose. It's not a light shaft.  
22       It doesn't provide anything or maybe at one point it  
23       was a light shaft, but those regulations are long in  
24       the past. And so it makes the most sense to put it  
25       here.

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1           The only other option is to leave this  
2 closed court open to have no purpose and then blast  
3 through six levels of slab to retrofit an elevator in.

4           MR. HURTEAU:   s.   Economically, too, it  
5 would be quite a bit more costly to have to cut  
6 through the building.       Whereas, that?s already  
7 considered part of the square footage.

8           But if you look here, it?s merely this  
9 part added and if you look behind us you?ll see it?s  
10 not visible from the street where it says number one.

11          MR. KEARLEY:   Just to be clear on the code  
12 compliance.   I don?t believe we need to have an  
13 elevator to be code compliant.   If we are entering the  
14 owner?s unit on the fourth floor, we would need an  
15 elevator to be code compliant.   Since we?re entering  
16 it on the first floor, I do not believe we need to  
17 have an elevator to be code compliant.

18          But because of the nature of the building  
19 and of it being six levels, it?s a situation where it  
20 seems to me that it?s a logical step to take with  
21 having a residence that is five levels above grade and  
22 six in totality.

23          MR. MANN:   Okay.   Thank you.

24          CHAIRMAN GRIFFIS:   Thank you.   Anything  
25 else?

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1 VICE CHAIRPERSON MILLER: No.

2 Could you fresh my memory then.

3 How is the elevator related to the  
4 variance relief?

5 CHAIRMAN GRIFFIS: It's an addition to a  
6 nonconforming, and of course that already counts for  
7 lot occupancy.

8 MR. KEARLEY: It's an addition we're  
9 making to the building and because it's an existing  
10 nonconforming building that exceeds lot occupancy,  
11 you're automatically required to get a variance from  
12 any additions that you make.

13 VICE CHAIRPERSON MILLER: Okay. So, and  
14 then this addition then is because it's desirable?  
15 It's not because there's a--

16 CHAIRMAN GRIFFIS: You're asking why you  
17 have to do it?

18 VICE CHAIRPERSON MILLER: Yes. I know  
19 there's a practical difficulty again and this  
20 situation may be putting it somewhere else. Is there  
21 a practical difficulty that these two seeking the  
22 variance for the elevator?

23 MR. HURTEAU: Well, actually, I'd like to  
24 just comment on the two.

25 Speaking about the very tall units that

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1 for houses that are for sale that have had trouble is  
2 that an elevator would help greatly the resale. Even  
3 though this will be a condo, it's still a multi-level  
4 condo. That would be my unit. And that would help  
5 for resale.

6 The main reason why I was looking at the  
7 elevator is that my parents may move in at some point  
8 too and that was my main reason for originally wanting  
9 that in there. But for economically, if this unit  
10 were resold at some point, I don't plan to resell it,  
11 but if I did, because it has so many floors, if you  
12 came in there on the first floor and then the top part  
13 of the apartment is on the fifth floor, that's quite a  
14 shlep to go up there. And if I were to resell the  
15 unit, then I think having so many levels without an  
16 elevator, I think, would be to its resale detriment.

17 MR. COLLINS: Let me add to that. The  
18 practical difficulty here is the test and we could  
19 eliminate the need for the variance if we could take  
20 off the back part of the building and comply with the  
21 lot occupancy, but we can't. We can't. It's 75  
22 percent now. The requirement, because this is in the  
23 all other category, the requirement is 40 percent.

24 So, we would have to take the back half of  
25 the building and demolish it in order to be allowed to

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1 add to it, which is kind of, you know, intuitive. But  
2 if we were allowed to take off that much of the  
3 building, that would allow us to fill in this closed  
4 court with the elevator shaft without having to see a  
5 variance from that.

6 CHAIRMAN GRIFFIS: Anything else?

7 Mr. Kearley, you made a statement about  
8 the schools in comparison with occupancy and the  
9 different code and it may not be--I'm not sure you  
10 asserted that you knew exactly the entire code  
11 compliance would have to come in within a--

12 Am I understanding you correct that this  
13 is, you know, three quarter of its life of the  
14 building has been a school. If a new school moved in  
15 now, there would have to be accommodations that would  
16 not have had to be done 10 years or 20 years ago  
17 according to building code?

18 MR. KEARLEY: I believe it would probably  
19 be related to the amount of renovation that happened  
20 on the place.

21 CHAIRMAN GRIFFIS: But the building code,  
22 I guess, directly--has the building code changed in  
23 the last four years?

24 MR. KEARLEY: It has changed. It changes  
25 every three years or so.

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1                   CHAIRMAN GRIFFIS:    So, conceivably, it?s  
2                   more restrictive where there are changes that have  
3                   come in to play.

4                   MR. KEARLEY:    Exactly.    ADA particularly  
5                   in terms of accessibility and those types of issues.

6                   CHAIRMAN GRIFFIS:       Egress    would   be  
7                   required in an assembly space in a building at this  
8                   time--

9                   MR. KEARLEY:    You would need two means of  
10                  egress that would be enclosed means of egress.

11                  CHAIRMAN GRIFFIS:    Tell me where--

12                  MR. KEARLEY:    I don?t believe there?s any  
13                  that are in existence that need code because it?s an  
14                  open communicating stair which takes you up and down  
15                  the space.    It?s not an enclosed space.    And so I  
16                  think--I don?t believe it would be compliant the way  
17                  it is.

18                  CHAIRMAN GRIFFIS:    So, if I understand  
19                  your testimony about this building code business, a  
20                  school is coming in--a new school is coming, even  
21                  though there?s a special exception from this Board to  
22                  allow that, building code would require additional  
23                  modifications, if not structural alterations of the  
24                  building--in order to comply with the assembly space  
25                  on all those floors?

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1 MR. KEARLEY: Exactly. Exactly.

2 COURT REPORTER: Would you move your mike  
3 a little closer.

4 CHAIRMAN GRIFFIS: Sure.

5 MR. KEARLEY: Typically, you need two  
6 means of egress when you're in a place of assembly  
7 that's over three stories. And right now the one  
8 means of egress is not an enclosed means of egress.  
9 It's the original stair that's been there. And it's  
10 not a rated enclosure for that means of egress. So,  
11 we don't have--

12 CHAIRMAN GRIFFIS: So, is it your  
13 testimony that the building actually include at this  
14 point--lot occupancy for the school depending on--

15 MR. KEARLEY: By the strict letter of the  
16 law, I don't believe that you should be able to get a  
17 certificate of occupancy based on the current  
18 arrangement of the space.

19 CHAIRMAN GRIFFIS: Okay.

20 MR. HURTEAU: If I might add too when the  
21 existing people bought this in 1992, basically when  
22 people get--renew their license and get the C of O  
23 changed, sometimes inspection happens, sometimes it  
24 doesn't. To my knowledge, there was no inspection of  
25 the premises at that point and had there been, there

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1 could have been other changes.

2 CHAIRMAN GRIFFIS: Who are you talking  
3 about that bought it in 2002?

4 MR. HURTEAU: The people I got it from,  
5 the Japanese--

6 CHAIRMAN GRIFFIS: Oh, I see.

7 MR. HURTEAU: So, in other words, had some  
8 type of inspection occurred with them, I think they  
9 could have--there could have been some compliance  
10 issues.

11 CHAIRMAN GRIFFIS: Well, could perhaps the  
12 inspection only been invoked if there was a permit  
13 pulled for construction on the building?

14 MR. HURTEAU: Possibly.

15 CHAIRMAN GRIFFIS: Okay.

16 MR. HURTEAU: Possibly. Yes.

17 But to my knowledge, there was no such  
18 inspection. But if anything were to happen with this  
19 property while they had it or, you know, they  
20 basically took their chances, I think while they had  
21 it because having it as they did, the open staircase  
22 and not being ADA compliant and so on.

23 CHAIRMAN GRIFFIS: Okay.

24 Yes, Ms. Miller?

25 VICE CHAIRPERSON MILLER: I just have one

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1 more question.

2 With respect to residential properties, I  
3 think you testified it's certainly for a single  
4 family, six floors is unusual. But is there some  
5 floor level where elevators are pretty much common  
6 because, even if they're not required by code, they're  
7 found to be necessary?

8 MR. HURTEAU: Are you talking about in  
9 residential--

10 VICE CHAIRPERSON MILLER: In residential.

11 MR. HURTEAU: My experience is that like  
12 in the Hillendale development which is north of  
13 Georgetown Hospital, they build some four-level  
14 townhouses there. And what they did there and also in  
15 another project was they had an elevator auction and  
16 they had a closet that was on each floor so you could  
17 put an elevator in because of having four total level,  
18 they wanted to have it. So, people could easily put  
19 in an elevator so they had four closets in a row up  
20 and down. So, you could put one in or the developer  
21 could install one when they were purchased brand new.

22 So, often times for new construction, I've  
23 seen that if it is three or four levels, I've never  
24 seen residential new construction with five levels.  
25 But I've seen resales of five levels and I've never

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1 seen a six-level single-family dwelling.

2 But places that are new construction,  
3 often times I've seen elevators on the higher end,  
4 elevators as an option.

5 VICE CHAIRPERSON MILLER: So, resales with  
6 five levels, do they put in elevators?

7 MR. HURTEAU: There's a place for sale  
8 right now, 1854 Biltmore that just came on the market  
9 that has five levels. They did install an elevator  
10 there.

11 My neighbor at 2113 S Street that's been  
12 for sale for a long time with five levels, they do not  
13 have an elevator, although it's fully renovated.

14 VICE CHAIRPERSON MILLER: Okay. Thank  
15 you.

16 MR. HURTEAU: Sure.

17 MR. KEARLEY: I just wanted to wrap up  
18 testimony very quickly here.

19 I don't think we need to go into the size  
20 of the units we've talked about and necessarily the  
21 layout of the units and those types of things.

22 One final role I played as architect was  
23 working with Steve Calcott and talking to him at  
24 historic and he has told us that what we're doing he  
25 will put as the consent calendar. So, if something

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1 were historic, has seen the plans and the elevations.

2 We're going to restore the facade to its original  
3 intent with new wood windows that are compliant with  
4 Steve's wishes at historic. And we're told that we'll  
5 be on the consent calendar.

6 So, that's something else that we're  
7 trying to do to the building is to really bring it up  
8 to what is expected by the city and the neighborhood.

9 MR. HURTEAU: If I might add to that, too.

10 I was going to originally have, I thought  
11 erroneously that the second floor had--on the second  
12 floor I erroneously thought they had sort of double  
13 glass french doors there, three sets across. And I  
14 talked to Steve about that. He found a photo of the  
15 house actually and he said on that floor there were  
16 nine panes over nine panes. And so on the second  
17 level of windows, double hung and so I pretty much  
18 planned to do it exactly as to how the photo is.

19 CHAIRMAN GRIFFIS: Great. Anything else?

20 Follow up? Questions.

21 All right. We'll have time for other--  
22 anything else at this time?

23 MR. COLLINS: Yes. One final question.

24 Mr. Kearley, you have read the Applicant's  
25 statement that was submitted to the Board in this

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1 case.

2 MR. KEARLEY: Yes. I have.

3 MR. COLLINS: And with the exception of  
4 the comment that was noted about the elevator, do you  
5 adopt this as your testimony?

6 MR. KEARLEY: Yes.

7 MR. COLLINS: Thank you.

8 CHAIRMAN GRIFFIS: Excellent. Then let?s  
9 move ahead to Office of Planning. Let?s see if there  
10 is a mike down there works.

11 MR. MORPHIN: Good afternoon, Mr.  
12 Chairman. My name is Steven Mordfin with the Office  
13 of Planning.

14 And the building on the subject property  
15 consists of 9,024 square feet and although large,  
16 there are several other one-family residential row  
17 houses in the surrounding area with similar square  
18 footage ranging in size from 8,226 to 8,682 square  
19 feet of gross building area.

20 The cowhouse at 2111 S Street was  
21 converted back to a one-family dwelling that was the  
22 subject of a BZA application to convert it to  
23 apartments and the Applicant testified that there were  
24 economic constraints related to converting it back to  
25 single-family use.

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1           In this case, although the application  
2 indicates that there are economic constraints  
3 regarding converting the building back to single  
4 family use, no data was submitted supporting this  
5 claim. Therefore, the Office of Planning does not  
6 find the subject property to be affected by an  
7 extraordinary exceptional situation and cannot support  
8 the use variance request.

9           The application also requests variance for  
10 leave from the maximum lot occupancy permitted and a  
11 variance to allow for the enlargement of a  
12 nonconforming structure. As these variances are to  
13 accommodate a use variance that the Office of Planning  
14 does not support, the Office of Planning cannot then  
15 support these two variance requests.

16           The Office of Planning recommends denial  
17 of the application as submitted for apartments.  
18 However, the Office of Planning does not object to a  
19 variance that would allow for a flat, a use that would  
20 be more consistent with the Comprehensive Plan.

21           And that concludes the presentation from  
22 the Office of Planning.

23           CHAIRMAN GRIFFIS: Excellent. Thank you  
24 very much.

25           You've heard a lot of additional

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1 information present today. Does that go to  
2 additionally the data that you were thinking was  
3 needed and would that change your opinion?

4 And, secondly, could you just talk a  
5 little bit more about the difference between a flat, a  
6 two-unit and a four-unit and how that is impacted in  
7 terms of a use variance test that we have before us?

8 I understand your comment about the  
9 Comprehensive Plan, but here we are looking at the  
10 variance test and it doesn't seem to me that it makes  
11 much difference whether it would be a two-unit or a  
12 four-unit.

13 MR. MORPHIN: Okay. With regards to  
14 whether it was a flat or a four-unit, the property is  
15 zoned R-3 which doesn't permit either, as you're  
16 aware. A flat is first permitted in the R-4 zone  
17 district which is the next zone district up.

18 A four-unit building is not permitted in  
19 the R-4 zone. It's not permitted until you get to the  
20 R-5, unless you're doing a conversion, which is based  
21 on 900 square feet of lot area per unit which this lot  
22 doesn't have in order to --if it were R-4, you still  
23 wouldn't get more than two units as a matter of right  
24 as a conversion.

25 So, therefore, based on that we see that

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1 there is a difference between a flat and a four-unit  
2 and that you're going from R-3 to R-5 to get to the  
3 four-unit building.

4 CHAIRMAN GRIFFIS: I guess I can  
5 understand that in terms of the perspective of looking  
6 at the varying density or compatibility with the  
7 Comprehensive Plan. But in order to get to support a  
8 flat, wouldn't you have to get through a use variance?  
9 And if you got to the use, wouldn't you then have  
10 said that they were persuasive and they're meeting the  
11 test of uniqueness and then hardship?

12 MR. MORPHIN: Yes. I agree. You would  
13 need the use variance in order to establish a flat on  
14 that property.

15 CHAIRMAN GRIFFIS: I guess directly then,  
16 do you think they meet that test, but that you differ  
17 with the density in terms of unit?

18 MR. MORPHIN: I differ with the density in  
19 terms of unit, also because of the size of the  
20 building. Although it's large, it's not that much  
21 larger than other ones in the area, but it's still the  
22 largest that I was able to locate if were to be  
23 converted to single family use. I think it would be  
24 the largest single-family dwelling in the surrounding  
25 area.

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1 CHAIRMAN GRIFFIS: Okay.

2 MR. MORPHIN: And because of that, we  
3 could support--the Office of Planning could support a  
4 flat because it is the largest. I mean, at some point  
5 it is going to cut off at some point. Where does it  
6 break?

7 CHAIRMAN GRIFFIS: Okay. I'm just trying  
8 to put you to clarity and not questioning your  
9 analysis.

10 But what I'm understanding you saying I  
11 think then is that based on the uniqueness of the  
12 size. You've said it's the largest. That there would  
13 be some sort of hardship in making it single family.  
14 But that the two units goes to the level or the  
15 threshold from your analysis that fits within the one,  
16 you could say, the practicability, but the intent of  
17 the zone plan and not--is that correct?

18 MR. MORPHIN: That is correct.

19 CHAIRMAN GRIFFIS: Okay. I see. Okay.  
20 Indeed.

21 Good. And then the first question. I'm  
22 just going directly to the data required further  
23 analysis which as I'm understanding now brings us to  
24 the difference between two and four units. Have you  
25 heard that today and has the Office of Planning's

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1 position chanced at all from the report?

2 MR. MORPHIN: Well, that was first that we  
3 heard any numbers on how much it would cost to  
4 actually convert this building and what it would cost  
5 if he converted to a two unit or a four unit and, you  
6 know, whether or not he would break even or make money  
7 or lose money.

8 As he was accepted as an expert witness in  
9 that field and his numbers saying that, I mean, I  
10 would have to accept them. I can't attest them. I  
11 don't know enough about how much it's going to cost.  
12 I would rely on his expertise.

13 CHAIRMAN GRIFFIS: Okay. But does it rise  
14 to a level of changing the opinion?

15 I wouldn't be surprised if it doesn't. I  
16 mean, you know, it's a spur of a moment here but I'm  
17 just--

18 MR. MORPHIN: Right. It's on the spur and  
19 I haven't given it a lot of thought based on the  
20 information that he had said. I'm inclined to think  
21 maybe not, because I haven't looked at how much it  
22 actually costs and seen his numbers and actually  
23 looked at them on paper besides just hearing them,  
24 just comparing them.

25 CHAIRMAN GRIFFIS: Indeed. But I think

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1 that sounds very logically.

2 MR. MORPHIN: Okay.

3 CHAIRMAN GRIFFIS: Any other questions of  
4 the Board? Ms. Miller?

5 CHAIRMAN GRIFFIS: Oh, Mr. Hood.

6 MR. HOOD: Your discussion with Mr.  
7 Morphin and the Applicant has provided some additional  
8 information today and I was just wondering--I don't  
9 know which way the Board wants to move, but it may be  
10 to our best interest, at least for me, to allow Mr.  
11 Morphin to look at that, because I really would like  
12 to see him evaluate the information that was provided  
13 here today, even though it's like the question you  
14 asked him was a spur of the moment. That may be  
15 something we may be able to put off until they are  
16 able to evaluate that.

17 I would feel more comfortable moving  
18 forward in that fashion.

19 CHAIRMAN GRIFFIS: Indeed. I have no  
20 difficulty with that, Mr. Hood, if you'd like to give  
21 the Office of Planning an opportunity to do a  
22 supplemental report, if that's what you prefer to do.

23 It was very substitutive information that  
24 came in, especially the comparisons in sales, but also  
25 the comparisons of construction costs and

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1 configuration. We may, in fact, have other  
2 information that we need into the record.

3 Ms. Miller? Mr. Mann?

4 MR. MANN: You identified several other  
5 similar-size row houses used as one-family dwellings  
6 in the surrounding area. And then you give several  
7 examples and they range in the 82 to 8,600 square feet  
8 area.

9 Do you know how many different levels  
10 those examples are? How many different floors those  
11 row houses are?

12 MR. MORDFIN: No. The database that we  
13 pulled that from just gave the gross building area,  
14 which is the entire building including the basement.  
15 But it does not indicate the floor levels.

16 MR. MANN: Okay. So, the only thing that  
17 we know to be certain that's comparable is this square  
18 footage. And each of them is a row house however?

19 MR. MORPHIN: Each is a row house, or an  
20 end unit row house, which sometimes are defined as  
21 semi-detached by the zoning.

22 MR. MANN: Okay. But we do know for  
23 certain that they're on more than one level by their  
24 own--

25 MR. MORPHIN: I believe they're--from

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1 having walked this neighborhood in the past, I believe  
2 they're all on one level. I don't think there are any  
3 one-level row houses over there.

4 MR. MANN: Okay.

5 CHAIRMAN GRIFFIS: Well, based on the  
6 square footage, they wouldn't fit on the size that's--

7 MR. MANN: That's true.

8 CHAIRMAN GRIFFIS: -- that would margin  
9 that shows for lot sizes.

10 MR. MORPHIN: Yes. So, they have to be  
11 more than one level.

12 MR. MANN: Okay. Thank you.

13 CHAIRMAN GRIFFIS: Others?

14 VICE CHAIRPERSON MILLER: I'm just a  
15 little bit interested in how this use variance would  
16 be consistent or not--not inconsistent with the  
17 comprehensive plan or inconsistent with it. I  
18 understand your point about the four units aren't  
19 allowed until two zones later, but other than that. I  
20 mean often sometimes in OP reports we see certain  
21 provisions of the Comprehensive Plan cited and that's  
22 not really the case here.

23 You know, and often you can find different  
24 parts of the Comprehensive Plan to support different  
25 things. But is there something other than jumping

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1 from -- up two zones that's particularly inconsistent  
2 with the Comprehensive Plan?

3 MR. MORPHIN: Well, that was based on the  
4 generalized land use map, which is a part of the  
5 Comprehensive Plan. And it recommends moderate  
6 density residential for that site. And based on that,  
7 you know, the R-3 is a moderate density residential  
8 zone district, so that works with what's on that map.

9 Medium density, the R-5 also is indicated  
10 that it begins at R-5B. And so by going into the R-5,  
11 then you're no longer in the moderate density and so  
12 we feel the medium density is a lower density  
13 residential zone than the--once you're moved up to a  
14 higher residential zone district, you change the comp  
15 plan then.

16 VICE CHAIRPERSON MILLER: Okay. Because  
17 often when we're looking at residential applications,  
18 we see sections that talk about--I don't now if this  
19 is a Comprehensive Plan not, but increasing the  
20 residency in the District of Columbia, that that's  
21 something--and it's often in certain neighborhoods  
22 also that they want to increase residential.

23 So, in this case, we have a situation  
24 where it would be changing from a school to  
25 residences. And so I'm just wondering if there's a

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1 provision in the Comprehensive Plan that would relate  
2 to that in this neighborhood?

3 MR. MORPHIN: I don?t know the answer to  
4 that, but I can look into that to see what the  
5 Comprehensive Plan says about that if anything.

6 VICE CHAIRPERSON MILLER: Okay. Thank  
7 you.

8 CHAIRMAN GRIFFIS: Isn?t that like the  
9 boilerplate in the ward plan. We?re going to support  
10 and stabilize our residential base?

11 MR. MORPHIN: Most of the ward plans have  
12 a statement in there to stabilize, to improve, to  
13 modernize the housing within the ward. Sometimes the  
14 Comp Plans basically references specific locations.

15 CHAIRMAN GRIFFIS: Well, there are  
16 neighborhood in the overlays, of course, where you  
17 have competitive interests and perhaps even matter of  
18 right interests and the community may have.

19 I found it fascinating actually because  
20 the Applicant uses the same paradigm in comparison in  
21 their submission and not as--let?s look at what this  
22 is more analogous to or what zone, you know, and talks  
23 about the R-5. When we start throwing FAR in,  
24 although I found that Office of Planning looked at it  
25 more in a negative aspect. Applicant takes it as a

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1 positive and it's kind of strange because actually if  
2 you look at it. This is an existing structure that  
3 the zoning was laid over, you know. It wasn't as if  
4 it was built within the zoning on development context.

5 And so it's almost a non--for me, it's not a very  
6 direct or good comparison. And first of all, using  
7 the FAR because you've got a large structure and a lot  
8 of these neighborhoods as we know, look at these  
9 applications. The sites are small. And the buildings  
10 are large.

11 But if you look--I guess this is what it  
12 means. When I start thinking about a four FAR or a  
13 four and a half FAR or a five FAR or a three FAR, if  
14 you start looking at where FARs are actually utilized  
15 at that level, above the 1.8, when you start getting  
16 into the C zones, and you're talking about much larger  
17 lots. So, you're talking about much larger buildings  
18 and that's where they are to me is a much more  
19 comparable element of measurement as opposed to this.

20 But that may be more yammering than  
21 needed.

22 Let's move ahead then. Are there any  
23 other questions for Office of Planning?

24 I think it's an excellent report and it's  
25 not surprising the position taken by the Office of

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1 Planning. And I think it's a decidedly solid one in  
2 terms of its interpretation of the regulations. And  
3 it's a fairly strict interpretation of it. However, I  
4 think there is some room for differing analysis and I  
5 think you've heard some of that deliberation from the  
6 Board's perspective.

7 Let me ask the Applicant if they have any  
8 cross examination of the Office of Planning at this  
9 time?

10 MR. COLLINS: No. We do not --

11 CHAIRMAN GRIFFIS: Oh, very good. Okay.

12 Let's move ahead then to any other  
13 Government reports attendant to the application.

14 The architect has indicated that this has  
15 been reviewed by staff and it is proposed to be put on  
16 a consent calendar or perhaps will fall under the  
17 historic preservation guideline and laws to be  
18 reviewed by staff for permitting.

19 ANC-2D was recommending approval. Exhibit  
20 18--I don't see anybody here representing the ANC.  
21 However, they can come forward at time if they are.  
22 Outside of that, I do not have any other Government  
23 reports attendant to the application, unless the Board  
24 of Applicant is aware.

25 We can ask for all those that are here

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1 today if they would come forward to provide testimony  
2 I Application 17367.

3 Persons in opposition or in favor of the  
4 application. If there's no one else in the hearing  
5 room, perhaps, the building is closed or our signs  
6 didn't get them here. But in any case, they're not  
7 here to provide additional testimony. We can move  
8 ahead to any other questions from the Board or we'll  
9 go right into closing?

10 Any other questions?

11 Mr. Collins, let's hear some rebuttal or  
12 we'll go to closing?

13 MR. COLLINS: Rebuttal to the Office of  
14 Planning is really based upon facts.

15 And I apologize for not having had an  
16 opportunity to speak to Mr. Mordfin about this. I was  
17 away for four days. Just came back last evening. But  
18 I'd like to point out some factual differences that I  
19 have with his report.

20 I'm looking at the page 3 of the report  
21 under the heading of Existing Apartment Building Uses.

22 And the citation is there to the case immediately to  
23 the east of the subject site, the Holten Arms School  
24 was turned into eight condominiums. And the OP report  
25 indicates that the lots size there was 8,500 square

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1 feet, resulting in a density of 1,062.5 square feet  
2 per unit, which is almost twice that of the subject  
3 application.

4 Well, that's not correct. Actually, the  
5 lot size in that case was not 8,500 square feet, but  
6 4,250 square feet, because it only dealt with Lot 49  
7 and not with all three lots. The based atlas map, if  
8 I can refer you. I don't want to jump around too  
9 much.

10 But if you look at Tab A to the Applicants  
11 statement, and you find S Street in that application,  
12 if you look immediately above the S in S Street, you  
13 will see Lot 810, which is comprised of three lots  
14 that have a line drawn through them, 12, 49 and 8.

15 Well, 49 was the subject of that  
16 application for the eight units and that site  
17 measures, if you do the math, you can see it's 50 feet  
18 wide and 85 feet deep. That comes to 4,250 square  
19 feet.

20 CHAIRMAN GRIFFIS: I'm sorry, just for  
21 clarification. The 810 is the tax lot comprising of  
22 the--

23 MR. COLLINS: 810 is a tax lot that the  
24 developer bought.

25 CHAIRMAN GRIFFIS: Right.

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1 MR. COLLINS: He turned former Lot 12 into  
2 a single-family dwelling. Built a single-family  
3 dwelling on that lot and then Lot 9 was the eastern  
4 portion of the old Holten Arms building that was an  
5 additional added on later--

6  
7 CHAIRMAN GRIFFIS: Right.

8 MR. COLLINS: -- that they re-established  
9 the first wall, bot HPRB approval for a new front door  
10 and sold that as a single-family dwelling.

11 CHAIRMAN GRIFFIS: And so the 8,500 square  
12 feet it looks like it?s written under the Lot 810 is  
13 actually for all of the lots under 810?

14 MR. COLLINS: All three lots. That?s  
15 correct.

16 CHAIRMAN GRIFFIS: I see.

17 MR. COLLINS: That?s correct. So, the lot  
18 size in that BZA application 16497 was only 4,250  
19 square feet. So, if you do the math there, dividing  
20 4,250 square feet by eight units, the density per unit  
21 comes out to 531.25 square foot of land area per unit.  
22 That?s exactly the same as what we?re proposing in  
23 this application. Exactly the same.

24 If you do that same exercise with the  
25 other BZA applications that were cited above under the

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1 heading of Prior Board of Zoning Adjustment Actions on  
2 page 3, if you do that same math with those three,  
3 case number 12762, the land area there was 3,400 square  
4 feet. The number of units was 10, resulting in a  
5 density of 340 square feet of land area per unit.

6 In Case No. 13348, the land area was 5,550  
7 square feet, the number of units was 14. The density  
8 425 square feet of land area per unit.

9 Case No. 15161, land area of 1,1700 square  
10 feet. The number of units was 5, density 340 square  
11 feet of land area per unit.

12 Those are all lower than our land area  
13 which is 531.25 feet of square feet of land area per  
14 unit for our building, which is exactly the same as  
15 what happened next door at 2125 S Street.

16 If you were to take these mathematical--  
17 look at it another way.

18 Take the building gross floor area and  
19 divide by the number of units and see what you get.

20 For the Holten Arms School next door, that  
21 building was about 15,000 square feet. The number of  
22 units was 8 and so resulting in about 1,875--an  
23 average unit size 1,875 square feet. Now, there is  
24 some weight larger than that and some weight smaller  
25 than that. But the average is 1,875.

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1 For Case No. 12762, the building size was  
2 about 11,000 square feet. The number of units was 10.  
3 The average size 1,100 square feet per unit average.

4 Case No. 13348, the building gross floor  
5 area is 15,700 square feet with 14 units. The average  
6 unit size 1,121 square feet.

7 This case the building size of 9,000  
8 square feet and four units the average unit size is  
9 2,250 square feet. Now, of course, we have one at  
10 5,000 and the other much smaller. But if you're  
11 talking about average unit size, we are much larger  
12 than the average unit size of the other multi-family  
13 dwellings on this street.

14 We have the largest--we have exactly the  
15 same as the one next door, which are the two largest  
16 in terms of land area per unit. So, we're not lower.  
17 We're not smaller than the others.

18 Also, the data that we have available to  
19 us from the Office of Tax and Revenue. I'm looking  
20 now on page 4 of the Office of Planning report. Under  
21 the second paragraph under the heading of Zoning  
22 Analysis, talking about the size of the structure and  
23 how this is similar. The subject structure is similar  
24 in size to other structures.

25 We have Office of Tax and Revenue

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1 information which differs from what Office of Planning  
2 comes up to in terms of numbers and such in terms of  
3 size of the building.

4 The OTR website shows 2135 Bancroft as  
5 having a living area of 7,548 square feet, which is  
6 less than the 8,682 which is listed in the OP report.

7 For 2132 Bancroft, it lists 4,373 square  
8 feet which is much less than the 8,226 square feet  
9 listed.

10 For 2122 Bancroft, the OTR website lists  
11 4,168 square feet, which is much less than the 8,646  
12 square feet listed in the OP report.

13 And then finally 2111 Bancroft is listed  
14 here as 4,637 square feet and this is living area and  
15 this may not be an apples to apples comparison, but in  
16 terms of order of magnitude, certainly a big  
17 difference.

18 Living area, 4,637 square feet which is  
19 much less than the 8,646 square feet.

20 So, the numbers that are used, you know,  
21 depending upon the data that you have, can make a big  
22 difference. So, our building is 9,000 square feet.  
23 Much, much bigger than these others.

24 The next paragraph down, the third  
25 paragraph with the Office of Planning report talks

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1 about 2111 S Street as being converted back to single-  
2 family dwelling use showing it to determine--to show  
3 that we could also do the same thing. Well, that's  
4 not correct either. That lot size for 2111 S is 1,700  
5 square feet. I don't have the information on the  
6 building size, but it was a three-story and partial  
7 fourth floor--three story building, partial fourth  
8 floor.

9 Even assuming that the lot occupancy was  
10 80 percent, which it probably was not, but probably  
11 less. But even assuming it was 80 percent, that would  
12 result in a building of about 4,100 square feet for a  
13 single-family dwelling. That's not unusual certainly.

14 But ours is 9,000. Twice that.

15 I think, Mr. Chair, you touched on the  
16 fact that this is a zoning category that's been  
17 overlaid on top of a building that was already 35  
18 years old or more when the zoning came in in 1958.  
19 I'm sorry, no. 48 years old.

20 It's an existing building in the historic  
21 district. There's nothing we can do about the density  
22 of the building. There's nothing we can do about the  
23 prior uses. The building certainly does not comply  
24 with a bunch of things, FAR, lot occupancy, but that's  
25 just the way it was built. Zoning came in later and

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1 in an effort to make the lines straight and not have  
2 to jag here or there, they put this in the R-3 Zone.  
3 It's not an R-3 building. It hasn't been an R-3 use.  
4 The building already exists.

5 On the bottom of page 5, the last  
6 paragraph on the bottom of page 5 points out on 2125  
7 on the issue of parking at 2125 S Street. Says that  
8 the building next door to 2125 S Street provides one  
9 parking space for two-thirds of its units. There are  
10 8 units in there with 5 parking spaces. It's close to  
11 two-thirds. It's five eighths. But the fact is,  
12 there are three units that have no parking. And  
13 that's what we'll have. We'll have three units with  
14 no parking.

15 The prior use here was a school that had  
16 no parking with 200 students plus faculty and staff on  
17 top of that.

18 We have an ANC report. The ANC, which one  
19 would think might be the one most directly affected by  
20 the shortage of parking, which unanimously supported  
21 this application to turn the school into a four-unit  
22 condo because they know that the traffic impact, the  
23 parking impact will be much, much less from this  
24 proposal.

25 And that concludes--that's my rebuttal on

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1 the OP report.

2 Mr. Hurteau, I believe, has some points  
3 and some documentation that he wanted to submit into  
4 the record in rebuttal.

5 MR. HURTEAU: Yes. On page 3 and under  
6 Prior Board of Zoning Adjustment Actions, number 2.  
7 No, number 1. It talks about 2115 and 2117 S Street  
8 that the parking program was established to allow the  
9 owners of each unit to lease up to 10 spaces in the  
10 universal building.

11 What I did was I pulled up all the records  
12 of sales in that building that exists. It goes back,  
13 I think, about five years, of which every single one  
14 said street for parking.

15 Here's what developers do and it's  
16 basically a bunch of BS. What they do is they go in  
17 and pay a large amount to an office building saying I  
18 want parking spaces so I can sell my units with  
19 parking and get permission from the BZA. They don't  
20 tell them that, but they basically go in and they  
21 something like, some outrageous amount per parking  
22 space so they can get a group of parking spaces with  
23 that property. It's done for a year at a time and the  
24 people who live in the building have the chance to  
25 rent it afterwards at that exorbitant rate which they

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1 typically don?t.

2 So, what I did was I pulled up every sale  
3 in that building, 2115 and 2117, last figures, and not  
4 one of them had rental parking available.

5 What happens is, developers can go into  
6 buildings, office buildings, and basically say, well,  
7 I want to rent parking and typically the buildings say  
8 no. Only for tenants. Well, what number can I up  
9 that to that you allow me to do that for a year? And  
10 so typically they can up the number per parking space  
11 in those buildings so that way they can have it for a  
12 year and the developer will sometimes pay for it or  
13 subsidize it.

14 So, one of two things can happen. One is  
15 they can go to a place like a BZA and say, see. I?m  
16 providing parking for my building. They can also  
17 entice people to buy in the building saying we have  
18 rental parking available. But what happens is after  
19 one year of that, the tenants usually do not choose to  
20 pay an exorbitant amount for parking after that point.  
21 Sometimes it can be as much as double.

22 I pulled up the records of every sale in  
23 that building in the multiple listing that goes back  
24 as far as the multiple listing has records for that  
25 which is about, I think, about five years. Not one of

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1       them had rental parking or said rental parking  
2       available for it.

3               Basically, as I understand it, a year  
4       after conversion of that building, basically the  
5       parking was over.

6               CHAIRMAN GRIFFIS:   Why does it help your  
7       case?

8               MR. HURTEAU:   What they were pointing out  
9       was that I don?t have parking, that they had parking.

10       They made parking available.   I could do the same  
11       thing.   I could go to the universal building and offer  
12       \$400 per space and make it seem like, have the  
13       appearance that I?m providing parking.   But it?s  
14       baloney.   I?m not going to do that because after a  
15       year it?s going to be gone and the neighborhood is no  
16       better off for it.

17               CHAIRMAN GRIFFIS:   I don?t know that we  
18       need that into the record.

19               MR. HURTEAU:   Okay.

20               CHAIRMAN GRIFFIS:   Let me just be clear  
21       also that if you were to come in and you had accessory  
22       parking, it would be another type of relief sought  
23       from the Board.

24               MR. HURTEAU:   Okay.

25               CHAIRMAN GRIFFIS:   I have never been on a

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1 case where we didn't have an extension of a lease that  
2 had to be provided that we knew how long it was going  
3 to be in existence or not. But I understand your  
4 point.

5 MR. HURTEAU: Okay.

6 CHAIRMAN GRIFFIS: You can make provisions  
7 that may not be permanent.

8 MR. HURTEAU: Yes. Several other things  
9 about this is a developer who had looked at this, I'm  
10 sure, to make a profit, this would have to be--it's  
11 9,000 square feet. So, this would have to be a lot  
12 more units. This building is a eye sore. It has  
13 these window unit air conditioners sticking out of the  
14 windows. It has vinyl windows. As it currently looks  
15 it's an eye sore.

16 The neighbors have been overwhelming  
17 supportive of it because I want to make it a  
18 residence, as a place where I want to live. I want to  
19 make it a really nice place.

20 If basically if it's to be profitable, it  
21 would have to be a lot of units than what it is. But  
22 I like the building enough that I'm willing to take  
23 the chance and possibly lose money if I resell it.  
24 But I want to live there a long time. I want to make  
25 it something really nice. And I want it to establish

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1 the point of enough units to try and make it so it  
2 would have a chance of breaking even.

3 But basically fewer than that, it's  
4 definitely going to be a loss and an economic  
5 hardship.

6 CHAIRMAN GRIFFIS: Thank you.

7 MR. COLLINS: I have copies, Mr. Chairman,  
8 of the--on the website that I would like to submit to  
9 the record.

10 CHAIRMAN GRIFFIS: Good.

11 MR. COLLINS: If I may? Mr. Mordfin has a  
12 copy as well.

13 And I believe Mr. Hurteau has --he has  
14 copies of documentation supporting the points that he  
15 made earlier in rebuttal and we'd like to submit those  
16 to the record as well.

17 CHAIRMAN GRIFFIS: Not the whole box.  
18 Right?

19 MR. COLLINS: Well, it's one thing for  
20 each.

21 What I did was and some have--each exhibit  
22 there are six exhibits and each have a synopsis, a  
23 brief synopsis so you don't have to go through it.  
24 But what I did was I copies--the longest one is a deed  
25 records for Bancroft which has 30 out of 30 single-

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1 family houses. And then showing the 45 deeds of S  
2 Street which shows of that the overwhelming majority  
3 are condos. But you can just read the one-page  
4 synopsis for each. That's a total of six pages that's  
5 in the front of each exhibit.

6 CHAIRMAN GRIFFIS: Or paragraph.

7 MR. COLLINS: Paragraph. It's pretty much  
8 a paragraph per exhibit or couple paragraphs per  
9 exhibit.

10 So, if you want to throw in the rest--

11 CHAIRMAN GRIFFIS: You weren't counting on  
12 a bench decision, were you?

13 MR. COLLINS: We're prepared to rebut.

14 MR. HURTEAU: Yes.

15 MR. COLLINS: Give one to the Office of  
16 Planning.

17 MR. HURTEAU: Okay.

18 CHAIRMAN GRIFFIS: Thank you very much.

19 Okay. Mr. Collins, what else do we need?

20 MR. COLLINS: I believe that's it, Mr.  
21 Chair. I think that we did submit substantial  
22 evidence and testimony to support our request for a  
23 variance relief in this application. And realizing  
24 that we did submit some information here, we'd like  
25 your positive vote at the earliest possible date.

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1 Thank you.

2 CHAIRMAN GRIFFIS: Good. Thank you very  
3 much.

4 Board Members, let me hear from you. We  
5 had discussed briefly keeping the record open for a  
6 supplemental report from Office of Planning. I have  
7 gotten perhaps some off the record comments that  
8 there?s an awful lot sufficient in this record to move  
9 ahead.

10 Let me hear in terms of setting a  
11 schedule.

12 As I look at this, this has been very  
13 productive, I think, in terms of the oral testimony  
14 that?s been provided today.

15 A couple of important points have been hit  
16 and I won?t summarize why. We can save that for  
17 deliberation. But let me hear from others.

18 MEMBER ETHERLY: Thank you very much, Mr.  
19 Chair.

20 I would agree with you that perhaps at the  
21 outset of this hearing there were indeed some  
22 outstanding questions that needed to be aired out and  
23 I think from at least my own perspective, some of  
24 those questions as they related to issues around the  
25 financial aspects of the application, in particular,

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1 the --obviously the big issue of, do you do four? Do  
2 you do some smaller number? Why isn't that as  
3 feasible as it might perhaps be in other settings?

4 I think that discussion has been very much  
5 flushed out and fattened up if you will to the point  
6 where I would be comfortable with moving forward, Mr.  
7 Chair.

8 CHAIRMAN GRIFFIS: Today?

9 MEMBER ETHERLY: Today. That is correct,  
10 Mr. Chair.

11 But with that, let me speak to the Office  
12 of Planning component.

13 I entirely understand the position that I  
14 believe Mr. Mordfin finds himself in or finds this  
15 particular subject property in, if you will regarding  
16 the critical issue of that increased density.

17 The way in which I look at this, however,  
18 is I think when you take in the totality, the project  
19 as I?s proposed, I still see something that is fairly  
20 in step with what is happening in the surrounding  
21 community. And I think the Applicant has done a very  
22 persuasive job in my opinion of demonstrating that  
23 there is not a significant measure of harm that would  
24 be done. And I?m not necessarily speaking in the  
25 language of the test here. I?m just kind of very

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1 broadly, at this particular juncture, that there would  
2 not necessarily be a great deal of harm done to the  
3 surrounding community by the introduction of this  
4 project as it is currently proposed into the  
5 neighborhood.

6 Thank you, Mr. Chair.

7 CHAIRMAN GRIFFIS: Thank you for that  
8 comment. Well said.

9 Others?

10 VICE CHAIRPERSON MILLER: I'm not ready.  
11 I think I learned a lot today about this case but  
12 there's area that I think that the Applicant could  
13 address better and that was when I was posing  
14 questions about the practical difficulty test and I'm  
15 sorry I don't have the statute in front of me. But  
16 it's my understanding that there needs to be a showing  
17 that there's a practical difficulty that the owner has  
18 in complying with the area restriction that leads them  
19 to seek a variance.

20 I mean, all I have in front of me today is  
21 Palmer which just says generally it must be shown that  
22 compliance with the area restriction would be  
23 unnecessarily burdensome.

24 So, I think what I was hearing was like,  
25 you know, it was desirable to do something. And then

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1       there was a practical difficulty in doing it another  
2       way.     And maybe the Applicant could address that  
3       either that I'm not reading the test correctly or that  
4       they can make the test that there is some difficulty  
5       if they can't get the area variances for some of them.

6       And I think that probably is the case because I heard  
7       some difficulty even with respect to the elevator that  
8       it might be very difficult to get up to the sixth  
9       floor.

10               But I don't think the case was made in the  
11       pleadings.

12               CHAIRMAN GRIFFIS:     I don't understand.  
13       And really I'm at a bit of a loss here.   Because what  
14       you're saying is somehow there has to be a showing  
15       that you're forced to do what you're here to do?

16               VICE CHAIRPERSON MILLER:   No.   Not forced.

17               CHAIRMAN GRIFFIS:   That's exactly what you  
18       said.     You said, well, where is the practical  
19       difficulty in having to do this?   So, all these  
20       additions that we see that come in for variances, some  
21       how the land is telling them they have to add onto the  
22       house.    But in adding on, they need a variance.

23               VICE CHAIRPERSON MILLER:   No.   That's not  
24       what I'm saying.   I'm not saying that they have to do  
25       it.     I'm saying that they have to show that there's

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1 some difficulty if they don?t do it.

2 For instance, they may not have to have  
3 the elevator. But there may be a difficult if they  
4 don?t have it.

5 CHAIRMAN GRIFFIS: I?d love to see a court  
6 case or let?s start with the regulations that show it.

7 VICE CHAIRPERSON MILLER: Let?s start with  
8 the statute, but I wish --I don?t have it in front of  
9 me which I usually do.

10 CHAIRMAN GRIFFIS: The regulations will  
11 set to say, as the property is unique, what is it that  
12 is a practically difficult in complying with the  
13 regulations? Not--

14 VICE CHAIRPERSON MILLER: That?s correct.

15 CHAIRMAN GRIFFIS: -- what is it that  
16 forced you to do this and, therefore, is not making  
17 you able to comply with the regulation.

18 At some point there is an initiation of an  
19 Applicant --of an owner to do something. That  
20 initiation doesn?t come out of the property requiring  
21 it.

22 VICE CHAIRPERSON MILLER: I didn?t say  
23 require. I said that there must be some practical  
24 difficulty that the owner is going to experience if  
25 they have to comply strictly with the regulation. And

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1 I think that it?s--

2 CHAIRMAN GRIFFIS: Okay. Maybe I?m not  
3 understanding what you?re saying then.

4 VICE CHAIRPERSON MILLER: Okay.

5 CHAIRMAN GRIFFIS: Let?s use this specific  
6 case of mine so I know what we?re asking for.

7 We have no parking requirement here.  
8 Correct?

9 VICE CHAIRPERSON MILLER: Correct.

10 CHAIRMAN GRIFFIS: Okay. However, a  
11 parking pad wants to be provided. We have a site that  
12 has an incredibly sloped rear so that parking, if not  
13 impossible, is certainly practically difficult.  
14 Right?

15 In order to provide that parking pad,  
16 they?re putting a structure that is counted towards  
17 lot occupancy which, therefore, makes them come in  
18 from lot occupancy.

19 What?s the --it seems to me you?re asking  
20 them to show a motivation for providing that pad as  
21 some of the practical difficulty. Is that correct?

22 VICE CHAIRPERSON MILLER: I think we can  
23 make the case for them right here.

24 When we do our analysis, we?ve got to fill  
25 in those blanks and I mean I could guess right here

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1 and say for instance with the parking. If there were  
2 a zillion parking spaces on the street, then it might  
3 be hard for them to say that there?s a practical  
4 difficulty if they don?t have a parking pad behind.  
5 You know, for instance.

6 CHAIRMAN GRIFFIS: Say this developer  
7 was--

8 VICE CHAIRPERSON MILLER: Not just because  
9 they want it.

10 CHAIRMAN GRIFFIS: --UPARK and owned every  
11 surface parking in the city. Are you saying they  
12 wouldn?t have a practical difficulty showing in order  
13 to want to put a parking space on their property?

14 Why would he have to survey and show that  
15 there?s a practical difficulty in requiring--in having  
16 to provide a parking space when we?re talking about ta  
17 lot occupancy?

18 VICE CHAIRPERSON MILLER: The way I read  
19 the regulation is that they have to show a practical  
20 difficulty upon the owner as to why they need to vary  
21 from the requirement.

22 I don?t think it?s that difficult, but I  
23 think that a showing has to be made.

24 CHAIRMAN GRIFFIS: I know. I don?t  
25 disagree with you there, but I?m wondering what

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1 showing you're asking them to provide? The showing  
2 that they're saying it's practically difficult to park  
3 on a sloped rear yard. So, they create a level  
4 parking pad. How is that? And the practical  
5 difficulty of that is if you put a level parking pad  
6 at the rear, it counts for lot occupancy. That's the  
7 testimony that they made for the case.

8 VICE CHAIRPERSON MILLER: Well, they may  
9 have it for the parking. Another one was the  
10 elevator. And we were talking about that.

11 And I think in the papers, to have the  
12 record correct, I think the papers. First they said  
13 it was required was code and then they said, no. It's  
14 really not. So, why do they have to have a--why --  
15 what's the need? What's the need they're fulfilling?

16 CHAIRMAN GRIFFIS: I guess that's the  
17 question.

18 VICE CHAIRPERSON MILLER: What's the  
19 practical difficulty if they don't have an elevator?  
20 I don't think it's that difficult to, you know,  
21 address.

22 CHAIRMAN GRIFFIS: Right.

23 VICE CHAIRPERSON MILLER: But I think it  
24 has to be addressed.

25 CHAIRMAN GRIFFIS: I don't think so. I

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1 think you're asking them to prove practical difficulty  
2 twice. You're asking them. Show me the practical  
3 difficulty for even proposing this and then let's go  
4 to the practical difficulty of what is in the  
5 requirement.

6 You're telling me that there has to be a  
7 showing that they need the elevator?

8 VICE CHAIRPERSON MILLER: Not that they  
9 need it. That they don't--

10 CHAIRMAN GRIFFIS: That it's practically  
11 difficult to live without it?

12 VICE CHAIRPERSON MILLER: If they don't  
13 have it there's some practical difficulty that they'll  
14 experience.

15 CHAIRMAN GRIFFIS: Let me see if I  
16 understand.

17 When we have these rear deck additions, do  
18 we ask them--how hard would your life be without? Is  
19 that first that they tell them? Is that the first  
20 requirement?

21 VICE CHAIRPERSON MILLER: No. The first  
22 is the exceptional condition.

23 CHAIRMAN GRIFFIS: And then we ask them,  
24 do you really need this deck? And if you really need  
25 it. Okay. Then let's get to well why is it

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1 practically difficult not to build it in compliance  
2 with the zoning regulations?

3 It seems like you're asking two--

4 VICE CHAIRPERSON MILLER: No.

5 CHAIRMAN GRIFFIS: -- practical difficulty  
6 tests.

7 VICE CHAIRPERSON MILLER: No. I'm not  
8 even asking them. It's not even need. It's what is  
9 the difficulty? I don't think it's too difficult--

10 CHAIRMAN GRIFFIS: So, let's take it to  
11 the elevator. All right. I don't think it's--

12 CHAIRMAN GRIFFIS: So, let's take it to  
13 the elevator.

14 Do you need--is there has to be a showing  
15 of why it's practically difficult to not have the  
16 elevator here?

17 VICE CHAIRPERSON MILLER: --

18 MR. KEARLEY: I think we answered that in  
19 some ways because of the--I think we answered that and  
20 specifically when you're talking about the number of  
21 stories in the particular unit. That particular unit  
22 is actually five stories. It starts at the first  
23 floor and goes all the way up to the fifth floor. So,  
24 if you're talking about a practical difficulty of not  
25 having the elevator, you're in a residence which is

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1 five stories, which is very unusual, if not unheard  
2 of.

3 So, when you're talking about someone's  
4 parents living there and having the necessity of  
5 having that, so I think we have addressed that in some  
6 ways.

7 CHAIRMAN GRIFFIS: Let me interrupt you  
8 because what we're talking about here is an addition.

9 I don't care if the edition is filled with an  
10 elevator or it's --maybe it's the biggest laundry  
11 shoot going. What do we care what the use of it is of  
12 what's being proposed?

13 What I'm hearing you ask is, an additional  
14 test. Now, they're putting an addition on a  
15 nonconforming building. The elevator was going into a  
16 closed port, where I think it is at the property line  
17 through walls. The closed court counted for his lot  
18 occupancy already. But the mere fact that it's an  
19 addition to a nonconforming, sets you in.

20 MR. COLLINS: I didn't know this was a  
21 discussion or what, but if I can just chime in.

22 There's a three-part test. The property  
23 is affected by an exceptional situation or condition.

24 VICE CHAIRPERSON MILLER: Yes.

25 MR. COLLINS: Such that the strict

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1 application of the regulations would impose a  
2 practical difficulty.

3 CHAIRMAN GRIFFIS: Right.

4 MR. COLLINS: We seem to be talking about  
5 just the first two parts of the three-part test.

6 CHAIRMAN GRIFFIS: That's right.

7 MR. COLLINS: On the parking, we have an  
8 absolute right to park on the site. There's no  
9 requirement that we have to show a need to park or  
10 that we don't show that the zoning requirements--the  
11 zoning regulations require that we park. We are  
12 absolutely allowed to park.

13 The practical difficulty comes in how do  
14 we do that? How do we do that parking on the site?  
15 We do it in one of several ways. We either put a  
16 garage doors in front of the building, because we  
17 can't park in the front yard. That's public space.  
18 We have to put a garage door in front of the building  
19 and drive in the front. Or we have to park in the  
20 back.

21 We can't park in the back because the site  
22 slopes. That's the practical difficulty. The sloping  
23 site, the existing historic building. That's the  
24 combination of the practical difficulty here.

25 VICE CHAIRPERSON MILLER: Maybe we should

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1 just have a give and take a little bit and we won?t  
2 need to have any filings.

3 CHAIRMAN GRIFFIS: Okay.

4 VICE CHAIRPERSON MILLER: But what is--you  
5 don?t have to park. If you have a practical  
6 difficulty in providing a parking space. Correct?  
7 What?s your practical difficulty if you don?t provide  
8 that? To me, that?s the question.

9 MR. COLLINS: That?s not the test. The  
10 test is--

11 CHAIRMAN GRIFFIS: I don?t think it?s  
12 anywhere in the regulation.

13 MR. COLLINS: -- due to an exceptional  
14 situation or condition affecting the property, the  
15 strict application of the regulation would impose a  
16 practical difficulty.

17 Strict application of the regulation says,  
18 you can park in a side yard or rear yard.

19 VICE CHAIRPERSON MILLER: Oh, that?s--

20 MR. COLLINS: Or inside a building.

21 VICE CHAIRPERSON MILLER: Okay.

22 MR. COLLINS: So, we can?t park inside the  
23 building because you can only access that from the  
24 front.

25 VICE CHAIRPERSON MILLER: There you go. I

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1 got it.

2 MR. COLLINS: Okay.

3 VICE CHAIRPERSON MILLER: Strict  
4 application says you can park in those places but you  
5 can?t?

6 MR. COLLINS: But we can?t.

7 VICE CHAIRPERSON MILLER: Okay. That?s  
8 it.

9 MR. COLLINS: And then just let me go on  
10 for the elevator just to clarify that situation.

11 VICE CHAIRPERSON MILLER: Okay.

12 MR. COLLINS: We don?t have to prove that  
13 we need an elevator.

14 VICE CHAIRPERSON MILLER: No. I never  
15 said that.

16 MR. COLLINS: No. I know you didn?t say  
17 that, but there?s been some unclarity in some  
18 statements that were made by us. But, no. We know  
19 that variances aren?t personal to the Applicant.

20 But we know that the strict application  
21 of the regulations here for the elevator is that the  
22 building is already a nonconforming structure. And we  
23 are putting an addition to it, even though this hole  
24 in the building, this closed court, hole in the  
25 building is there and already counts lot occupancy.

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1                   In a discussion with the Zoning  
2 Administrator, even though this is a self-certified  
3 case, we discussed this with the zoning office before  
4 we filed to get their concurrence of what the areas of  
5 relief are. And they said. Yes. It?s a closed  
6 court. It?s lot occupancy, but if you put something  
7 in it, you?re adding to the building.

8                   CHAIRMAN GRIFFIS: So, if you put a closet  
9 in there, would you have to show us--

10                  MR. COLLINS: Yes.

11                  CHAIRMAN GRIFFIS: -- why you needed more  
12 closets?

13                  MR. COLLINS: No.

14                  CHAIRMAN GRIFFIS: Or would you come in  
15 for an addition to a nonconforming structure?

16                  MR. COLLINS: We?d come in for an addition  
17 on the nonconforming structure.

18                  So, the practical difficulty in the  
19 elevator comes in, in that we could jackhammer five  
20 slabs and put the elevator within the floors as long  
21 as you stayed outside--we didn?t fill in the court or  
22 put it on the outside of the building somewhere, as  
23 long as you stayed within the existing building  
24 footprint, we could put an elevator in. And that  
25 would not be an enlargement of the structure.

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1           An enlargement of the structure comes  
2       because we're putting--we're filling in the hole.  
3       That's the enlargement of the structure. So, the  
4       strict application of the regulations imposing a  
5       practical difficulty is the practical difficulty is  
6       that we have two choices. One is to jackhammer five  
7       slabs down and put the elevator in or chop off half  
8       the building, make it a nonconforming structure and be  
9       able to put the elevator in the court--in the hole in  
10      the closed court. That's our practical difficulty in  
11      that.

12                   CHAIRMAN GRIFFIS: Good.

13                   VICE CHAIRPERSON MILLER: Thank you.

14                   CHAIRMAN GRIFFIS: We have no more than 20  
15      minutes. However, we have to take a technical five-  
16      minute break for the reporter and then we'll be back.

17                   Let's go.

18                   (Whereupon, off the record from 4:51 p.m.  
19      to 5:04 p.m.)

20                   CHAIRMAN GRIFFIS: Very well, let's  
21      resume.

22                   We're going to set this for decision-  
23      making as we've had some information come in today.  
24      We're going to keep the record open for a supplemental  
25      report from the Office of Planning if they are so

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1 inclined.

2 Let me just take an assessment of whether  
3 it would be possible to get that in in seven days?  
4 Realistic?

5 MR. MORPHIN: By next Tuesday.

6 CHAIRMAN GRIFFIS: Have it in by next  
7 Tuesday?

8 Mr. Collins, we're going to give you a  
9 week to respond to that. Very well. In which case  
10 we'll set that up for decision, Mr. Moy on the  
11 following Tuesday. What would that be?

12 SECRETARY MOY: October 4.

13 CHAIRMAN GRIFFIS: It's going to be the  
14 week after the fourth actually, I believe. Good. So,  
15 it would be on the 11th we'd put this for.

16 Oh, it's all wrong. Let's do it on the  
17 18th shall we?

18 MR. COLLINS: Let me just clarify--

19 CHAIRMAN GRIFFIS: Right.

20 MR. COLLINS: Any response that we have  
21 would be due the 11th and the decision on the 18th?  
22 Or a decision on the 11th?

23 CHAIRMAN GRIFFIS: We're going to do it on  
24 the 18th, as we have some things on the 11th already.  
25 If we do a Special Public, the other option would be

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1 that we just move it to the 1st of November. But I  
2 think we can dispense with this on the 18th.

3 It does give us a little additional time.

4 Do you think they're going to need more than seven  
5 days to get this in? We can give you a day or two  
6 more. We could do Wednesday by 3:00.

7 MR. MORPHIN: Okay.

8 CHAIRMAN GRIFFIS: And then we'd move you  
9 to that Wednesday 3:00.

10 MR. COLLINS: Okay.

11 CHAIRMAN GRIFFIS: And that gives us  
12 enough time to get this out to the Board for decision  
13 on the 18th.

14 Okay. Anything else, Board Members? Any  
15 other additional information that we want provided  
16 into the record?

17 Very well. I didn't take note of any  
18 others unless the staff is aware of anything else?

19 Good. Then the schedule is, I can  
20 reiterate that or is everyone clear on schedule?

21 Excellent. So, we'll have that in and  
22 we'll go from there.

23 Good. Thank you all very much.  
24 Appreciate you being with us today and if there's no  
25 other business for the Board this afternoon, let's

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1 adjourn the afternoon session.

2 (Whereupon, the above matter was concluded  
3 at 5:07 p.m.)  
4  
5

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